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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion of equitable geographical distribution in the membership of the human rights treaty bodies

Report of the Secretary-General

Summary

In its resolution 68/161, the General Assembly requested the Secretary-General to submit to the Assembly at its seventieth session a comprehensive report on the promotion of equitable geographical distribution of the membership of the human rights treaty bodies. The present report, submitted in response to that request, provides information on the system for the election of treaty body members and an analysis of the current membership of each treaty body, by geographical region.

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I. Introduction

1. In its resolution 68/161, the General Assembly encouraged the States parties to the United Nations human rights instruments to consider and adopt concrete actions, inter alia, the possible establishment of quotas by geographical region for membership of the treaty bodies, thereby ensuring the paramount objective of equitable geographical distribution in the membership of those human rights bodies. The Assembly recommended, when considering the possible allocation of seats on each treaty body on a regional basis, the introduction of flexible procedures that would encompass the following criteria:

(a) Each of the five regional groups established by the Assembly is allocated seats on each treaty body in equivalent proportion to the number of States parties to the instrument in that group;

(b) There must be provision for periodic revisions of the allocation of seats in order to reflect the relative changes in the level of treaty ratification in each regional group;

(c) Automatic periodic revisions should be envisaged in order to avoid amending the text of the instrument when the quotas are revised.

2. The General Assembly stressed that the process needed to achieve the goal of equitable geographical distribution in the membership of human rights treaty bodies could contribute to raising awareness of the importance of gender balance, the representation of the principal legal systems and the principle that the members of the treaty bodies should be elected and should serve in their personal capacity, and should be of high moral character, acknowledged impartiality and recognized competence in the field of human rights.

3. The General Assembly requested the Secretary-General, in consultation with the Office of the United Nations High Commissioner for Human Rights, to submit to the Assembly at its seventieth session a comprehensive updated report, including information on any steps taken by States parties at meetings or conferences of States parties to address the matter of equitable geographical distribution in the membership of the human rights treaty bodies, as well as concrete recommendations on the implementation of resolution 68/161.

4. The present report, submitted in response to that request, provides an analysis of the current composition of the membership of the human rights treaty bodies. Given that the composition of the Committee on the Elimination of Racial Discrimination and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families will change only after 1 January 2016, no account is taken of the elections by States parties of nine and seven members to the former (25 June 2015) and the latter (30 June 2015) to replace those members whose terms will expire.

II. Human rights treaty bodies

5. Nine of the ten international human rights treaties provide for the creation of a committee of experts to carry out the functions delineated in the treaty and, where relevant, its optional protocols. Accordingly:

(a) The Committee on the Elimination of Racial Discrimination, established under the International Convention on the Elimination of All Forms of Racial Discrimination, began work in 1970;

(b) The Human Rights Committee, established under the International Covenant on Civil and Political Rights, began work in 1977 and is invested with functions by the Covenant and its two Optional Protocols;

(c) The Committee on the Elimination of Discrimination against Women, established under the Convention on the Elimination of All Forms of Discrimination against Women, began work in 1982 and is invested with functions by the Convention and its Optional Protocol;

(d) The Committee against Torture, established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, began work in 1987;

(e) The Committee on the Rights of the Child began work in 1991 and oversees implementation of the Convention on the Rights of the Child and its three Optional Protocols;

(f) The Committee on Migrant Workers, established under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, began work in 2004;

(g) The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, established under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, began work in 2007;

(h) The Committee on the Rights of Persons with Disabilities, established under the Convention on the Rights of Persons with Disabilities and its Optional Protocol, began work in 2009;

(i) The Committee on Enforced Disappearances, established under the International Convention for the Protection of All Persons from Enforced Disappearance, began work in 2011.

6. The International Covenant on Economic, Social and Cultural Rights does not provide for the creation of a treaty body but gives the Economic and Social Council a general mandate to oversee the implementation of the Covenant by States parties and specialized agencies through the consideration of reports. In 1978, the Council created the Sessional Working Group of Governmental Experts on the implementation of the Covenant to assist it in considering the reports submitted by States parties (decision 1978/10). The composition of the Sessional Working Group was amended by the Council in 1985 (resolution 1985/17) and it was renamed the Committee on Economic, Social and Cultural Rights. The Committee, which is treated as a treaty body, first met in 1987. Subsequently, the Human Rights Council has called for the regularization of the Committee so that its establishment is consistent with other treaty bodies (resolution 4/7).

III. Election of members of the human rights treaty bodies

7. With the exception of the Committee on Economic, Social and Cultural Rights, whose elections are governed by Economic and Social Council resolution 1985/17, the elections of members of treaty bodies are governed by provisions set out in each treaty (art. 8, International Convention on the Elimination of All Forms of Racial Discrimination; arts. 28-34, International Covenant on Civil and Political Rights; art. 17, Convention on the Elimination of All Forms of Discrimination against Women; art. 17, Convention against Torture; art. 43, Convention on the Rights of the Child; art. 72, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; arts. 5-9, Optional Protocol to the Convention against Torture; art. 34, Convention on the Rights of Persons with Disabilities; and art. 26, International Convention for the Protection of All Persons from Enforced Disappearance).

8. In accordance with those provisions, each committee is composed of independent experts, ranging in number from 10 to 25, with provisions for an expansion of the membership being included in several treaties (up to a maximum of 14 under art. 72 (1)(b) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; up to a maximum of 25 under art. 5 (1) of the Optional Protocol to the Convention against Torture and up to a maximum of 18 under art. 34 (2) of the Convention on the Rights of Persons with Disabilities).

9. To nominate or elect a member of a treaty body, a State must be a party to the treaty concerned (with the exception of the Committee on Economic, Social and Cultural Rights where the election process is conducted under the Economic and Social Council). Experts are nominated and elected by States parties to the treaty concerned by secret ballot. They serve for four-year terms and, except in the case of the newer treaty bodies, mainly the Subcommittee on Prevention of Torture, the Committee on Enforced Disappearances and the Committee on the Rights of Persons with Disabilities, which allow for the renomination of members only once, the treaties do not limit the number of times a member's term may be renewed. With the exception of the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention against Torture, which allow for the nomination of two candidates by each State party, all treaties limit the number of nominees to one. Candidates must be nationals of the nominating State party, except in the case of the Optional Protocol to the Convention against Torture, which entitles States parties to nominate a candidate who is a national of another State party where it nominates two candidates. The other candidate must be a national of the State party, and before it nominates a national of another State party, the nominating State must obtain the consent of the other State party (art. 6).

10. Where the Committee on Economic, Social and Cultural Rights is concerned, the Economic and Social Council, in its resolution 1985/17, provides that the Committee is to consist of 18 members elected by the Council by secret ballot from a list of persons nominated by States parties to the Covenant. Members serve for four-year terms and are eligible for re-election if nominated. The elections of members in respect of all other treaty bodies are held at biennial meetings of the States parties, or in the case of the Committee on the Rights of Persons with Disabilities and the Committee on Enforced Disappearances, at a conference of States parties to the treaties concerned. In all cases, to avoid a change of the entire

membership, the terms of half of the members elected at the first election are limited to two years, following which elections occur every two years.

11. On 9 April 2014, the General Assembly adopted resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system. In paragraph 13, the Assembly encouraged States parties, in the election of treaty body experts, to give due consideration, as stipulated in the relevant human rights instruments, to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies.

A. Qualifications for nomination as members

12. The qualifications expected of nominees, set out in the treaties and in Economic and Social Council resolution 1985/17, vary. In general, members are required to be of recognized competence and of high moral standing and acknowledged impartiality. The International Covenant on Civil and Political Rights also indicates that consideration should be given to the usefulness of the participation of some persons having legal experience (art. 28 (2)), while the Convention against Torture provides that, in nominating candidates, States parties should bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee and who are willing to serve on the Committee against Torture (art. 17 (2)). The Optional Protocol to the Convention against Torture indicates that members should have proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to persons deprived of their liberty (art. 5 (2)). In the case of the Committee on the Rights of Persons with Disabilities, States parties are invited to give due consideration to article 4 (3) when nominating candidates (art. 34 (3)). This requires States parties to closely consult and actively involve persons with disabilities, including children with disabilities, through their representative organizations, in the development and implementation of legislation and policies to implement the Convention and other decision-making processes concerning issues relating to persons with disabilities. All treaties and Council resolution 1985/17 indicate that members should serve in a personal capacity.

B. Criteria for election of members

13. The treaties and Economic and Social Council resolution 1985/17 provide criteria for States in the election of members of treaty bodies. With regard to the question of geographical balance, while consideration must be given to equitable geographical distribution in all cases, there is no formal quota, except in the case of the Committee on Economic, Social and Cultural Rights where Council resolution 1985/17 establishes a formula for ensuring balance. Additional considerations include representation of the principal legal systems (Convention on the Elimination of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, and Convention on the Rights of Persons with Disabilities); the different forms of social and legal systems (Committee on Economic, Social and Cultural Rights); the different forms of civilization (Convention on the Elimination of Racial Discrimination, Convention on the

Elimination of All Forms of Discrimination against Women and Convention on the Rights of Persons with Disabilities); the different forms of civilization and legal systems of the States parties (Optional Protocol to the Convention against Torture); and legal experience (International Covenant on Civil and Political Rights and Convention against Torture).

14. The newer treaties contain explicit provisions relating to gender balance. Thus, in the composition of the Subcommittee on Prevention of Torture, due consideration is to be given to balanced gender representation on the basis of the principles of equality and non-discrimination (art. 5 (4)). Where the Committee on the Rights of Persons with Disabilities is concerned, States parties are also required to give consideration to balanced gender representation and participation of experts with disabilities. The International Convention for the Protection of All Persons from Enforced Disappearance also requires due consideration to be given to balanced gender representation (art. 26 (1)).

15. Allocation of membership on a regional basis applies only in the case of the Committee on Economic, Social and Cultural Rights, with Economic and Social Council resolution 1985/17 providing that 15 seats on the Committee will be equally distributed among the regional groups, while the additional 3 seats will be allocated in accordance with the increase in the total number of States parties per regional group.

C. Replacement of members

16. All treaties contain provision for the replacement of any members who resign or die before the end of their term. In most cases, the State party that nominated the former member appoints another expert from among its nationals to fill the vacancy for the remainder of the term, subject in certain cases to the approval of the relevant treaty body (Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Committee on the Rights of the Child and Committee on Migrant Workers). In the case of the Committee against Torture, this is subject to the approval of other States parties. Replacement in such cases has no impact on the existing geographical distribution of the committee concerned. However, article 34 of the International Covenant on Civil and Political Rights requires vacancies on the Human Rights Committee to result in a new round of nominations and elections, provided that at least six months are left before the expiration of the term of the member. Although this may result in a change in the geographical composition of the Committee, in practice, the nationality of the member has changed only once on the occasions when members of the Committee have been replaced, with the replacement being from the same region as the original member.

IV. Five regions

17. According to an unofficial list compiled on the basis of the practice of States in elections at the General Assembly (see annex), the current composition of the regions recognized by the Assembly is:

African States	54
Asia-Pacific States	54
Eastern European States	23
Latin American and Caribbean States	33
Western European and other States	29
Total	**193**

18. The practice of some States differs for the purposes of elections and for other functions. Thus, for the purpose of elections, Turkey votes with the Western European and other States, although it is also a member of the Asia-Pacific States.

19. The Cook Islands, the Holy See, Niue and the State of Palestine are parties to one or more of the treaties but are not States Members of the United Nations.

V. Geographical distribution

20. Currently, 172 individual experts from 85 countries are serving as members of the treaty bodies. The membership of each treaty body varies, ranging from 10 to 25 (see table 1).

Table 1
Membership of human rights treaty bodies

Committee	*Membership*
Committee on the Elimination of Racial Discrimination	18
Human Rights Committee	18
Committee on Economic, Social and Cultural Rights	18
Committee on the Elimination of Discrimination against Women	23
Committee against Torture	10
Committee on the Rights of the Child	18
Committee on Migrant Workers	14
Subcommittee on Prevention of Torture	25
Committee on the Rights of Persons with Disabilities	18
Committee on Enforced Disappearances	10
Total	**172**

A. Current status of geographical distribution of membership of treaty bodies

21. The current status of the geographical distribution of the membership of the human rights treaty bodies indicates that the Western European and other States are the largest, with 45 members (26.2 per cent), followed by the African States, with 39 members (22.7 per cent), the Latin American and Caribbean States, with

34 members (19.7 per cent), the Asia-Pacific States, with 31 members (18.0 per cent), and the Eastern European States, with 23 members (13.4 per cent) (see table 2).

22. Relative to the level of treaty ratification by States per region, the Asia-Pacific and African States are underrepresented while the Western European and other States are overrepresented (see table 2).

Table 2
Geographical distribution of membership of treaty bodies

States	*Number of members (percentage)*		*Number of ratifications (percentage)*	
African	39	(22.7)	392	(28.4)
Asia-Pacific	31	(18.0)	313	(22.7)
Eastern European	23	(13.4)	189	(13.7)
Latin American and Caribbean	34	(19.7)	252	(18.2)
Western European and other	45	(26.2)	221	(16.0)
Non-member	–		14	(1.0)
Total	**172**	**(100.0)**	**1 381**	**(100.0)**

23. The geographical distribution of membership relative to the level of treaty ratification, when examined by committee, indicates that (see table 3):

(a) Although the composition of the Committee on the Elimination of Racial Discrimination shows a more balanced geographic distribution, the Western European and other States are overrepresented;

(b) In the case of the Human Rights Committee, the Asia-Pacific States remain far underrepresented while the Western European and other States are strongly overrepresented;

(c) In the case of the Committee on Economic, Social and Cultural Rights, the Western European and other States are overrepresented and the African States underrepresented;

(d) With regard to the Committee on the Elimination of Discrimination against Women, the Western European and other States are far overrepresented and the African and Asia-Pacific States underrepresented;

(e) Concerning the Committee against Torture, the Western European and other States are overrepresented;

(f) For the Committee on the Rights of the Child, the Asia-Pacific States are far underrepresented and the Western European and other States overrepresented;

(g) With regard to the Committee on Migrant Workers, the Latin American and Caribbean States are underrepresented relative to their proportion of ratifications;

(h) In the case of the Subcommittee on Prevention of Torture, the African States are underrepresented and the Latin American and Caribbean States overrepresented;

(i) For the Committee on the Rights of Persons with Disabilities, the African States are underrepresented relative to their proportion of ratifications and the Western European and other States are overrepresented;

(j) In the case of the Committee on Enforced Disappearances, the African States are not represented, while the Asia-Pacific States, Latin American and Caribbean States and Western European and other States are overrepresented relative to their proportion of ratifications.

Table 3
Ratifications and membership of each treaty body, by region

	Membership	*Ratification*
	Number (percentage)	
Committee on the Elimination of Racial Discrimination		
Last election of members held on 25 June 2015		
Total number of membership and ratifications	18	177
African	5 (27.8)	51 (28.8)
Asia-Pacific	4 (22.2)	40 (22.6)
Eastern European	2 (11.1)	23 (13.0)
Latin American and Caribbean	3 (16.7)	32 (18.1)
Western European and other	4 (22.2)	29 (16.4)
Non-member States	–	2 (1.1)
Human Rights Committee		
Last election of members held on 24 June 2014		
Total number of membership and ratifications	18	168
African	5 (27.8)	51 (30.4)
Asia-Pacific	1 (5.6)	35 (20.8)
Eastern European	2 (11.1)	23 (13.7)
Latin American and Caribbean	3 (16.7)	29 (17.3)
Western European and other	7 (38.9)	29 (17.3)
Non-member States	–	1 (0.6)
Committee on Economic, Social and Cultural Rights		
Last election of members held on 23 and 25 April 2014		
Total number of membership and ratifications	18	164
African	4 (22.2)	48 (29.9)
Asia-Pacific	4 (22.2)	35 (21.3)
Eastern European	3 (16.7)	23 (14.0)
Latin American and Caribbean	3 (16.7)	29 (17.7)
Non-member States	–	1 (0.6)
Committee on the Elimination of Discrimination against Women		
Last election of members held on 26 June 2014		
Total number of membership and ratifications	23	189
African	5 (21.7)	52 (27.5)

	Membership	*Ratification*
	Number (percentage)	
Asia-Pacific	5 (21.7)	51 (27.0)
Eastern European	2 (8.7)	23 (12.2)
Latin American and Caribbean	4 (17.4)	33 (17.5)
Western European and other	7 (30.4)	28 (14.8)
Non-member States	–	2 (1.1)
Committee against Torture		
Last election of members held on 1 October 2013[a]		
Total number of membership and ratifications	10	158
African	3 (30.0)	46 (29.1)
Asia-Pacific	2 (20.0)	35 (22.2)
Eastern Europe	1 (10.0)	23 (14.6)
Latin American and Caribbean	1 (10.0)	23 (14.6)
Western European and other	3 (30.0)	29 (18.4)
Non-member States	–	2 (1.3)
Committee on the Rights of the Child		
Last election of members held on 25 June 2014		
Total number of membership and ratifications	18	195
African	5 (27.8)	53 (27.2)
Asia-Pacific	2 (11.1)	54 (27.7)
Eastern Europe	2 (11.1)	23 (11.8)
Latin American and Caribbean	3 (16.7)	33 (16.9)
Western European and other	5 (27.8)	28 (14.4)
Non-member States	–	4 (2.1)
Committee on Migrant Workers		
Last election of members held on 30 June 2015[b]		
Total number of membership and ratifications	14	48
African	6 (42.9)	19 (39.6)
Asia-Pacific	3 (21.4)	8 (16.7)
Eastern European	1 (7.1)	3 (6.3)
Latin American and Caribbean	4 (28.6)	17 (35.4)
Western European and other	–	1 (2.1)
Subcommittee on Prevention of Torture		
Last election of members held on 23 October 2014		
Total number of membership and ratifications	25	79
African	3 (12.0)	18 (22.8)
Asia-Pacific	3 (12.0)	9 (11.4)
Eastern European	6 (24.0)	19 (24.4)
Latin American and Caribbean	6 (24.0)	14 (17.7)
Western European and other	7 (28.0)	19 (24.1)

	Membership	*Ratification*
	Number (percentage)	
Committee on the Rights of Persons with Disabilities		
Last election of members held on 10 June 2014		
Total number of membership and ratifications	18	156
African	3 (16.7)	43 (26.9)
Asia-Pacific	4 (22.2)	40 (25.6)
Eastern European	3 (16.7)	22 (14.1)
Latin American and Caribbean	3 (16.7)	25 (17.9)
Western European and other	5 (27.8)	22 (14.1)
Non-member States	–	2 (1.3)
Committee on Enforced Disappearances		
Last election of members held on 23 June 2015		
Total number of membership and ratifications	10	47
African	–	11 (23.4)
Asia-Pacific	2 (20.0)	6 (12.8)
Eastern European	1 (10.0)	7 (14.9)
Latin American and Caribbean	4 (40.0)	14 (29.8)
Western European and other	3 (30.0)	9 (19.1)

[a] Next election of members to be held on 8 October 2015.
[b] The composition of the Committee will change on 1 January 2016 owing to the elections held on 30 June 2015.

B. Current gender balance in membership of treaty bodies

24. Only 70 of the 172 treaty body members (40.7 per cent) are women. The membership of all the treaty bodies remains dominated by men, with the exception of the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child (see table 4). The Committee on Enforced Disappearances (8 of 10 members are men) and the Committee on the Elimination of Discrimination against Women (22 of 23 members are women) have the highest rates of gender imbalance. It is noteworthy, however, that the proportion of women members would scarcely have reached one quarter of the total treaty body membership had it not been for the high number of women elected to the Committee on the Elimination of Discrimination against Women.

25. Only 2 of the 10 Chairs of the committees are women. The Committee on the Elimination of Discrimination against Women and the Committee on the Rights of Persons with Disabilities have elected female Chairs, while the remaining eight committees are chaired by men.

Table 4
Gender composition of treaty bodies

Committee	Total	Female (percentage)	Male (percentage)
Committee on the Elimination of Racial Discrimination	18	4 (22.2)	14 (77.8)
Human Rights Committee	18	5 (27.8)	13 (72.2)
Committee on Economic, Social and Cultural Rights	18	3 (16.7)	15 (83.3)
Committee on the Elimination of Discrimination against Women	23	22 (95.7)	1 (4.3)
Committee against Torture	10	3 (30.0)	7 (70.0)
Committee on the Rights of the Child	18	9 (50.0)	9 (50.0)
Committee on Migrant Workers	14	3 (21.4)	11 (78.6)
Subcommittee on Prevention of Torture	25	13 (52.0)	12 (48.0)
Committee on the Rights of Persons with Disabilities	18	6 (33.3)	12 (66.7)
Committee on Enforced Disappearances	10	2 (20.0)	8 (80.0)
Total	**172**	**70 (40.7)**	**102 (59.3)**

VI. Conclusions

26. **Under the terms of the nine human rights treaties and an optional protocol that establish a treaty body, the modalities for the nomination and election of treaty body members are a matter for the States parties to those instruments. In respect of the Committee on Economic, Social and Cultural Rights, the nomination of candidates for election is a matter for States parties, whereas election is a matter for the members of the Economic and Social Council, with geographical distribution being subject to Council resolution 1985/17. In that regard, and recalling the recommendation made in paragraph 11 of General Assembly resolution 68/268, the Secretary-General recommends that the Council consider replacing the existing procedure for the election of experts to the Committee with a meeting of States parties to the International Covenant on Economic, Social and Cultural Rights, while preserving the current structure, organization and administrative arrangement of the Committee, as set forth in Council resolution 1985/17.**

27. **The Secretary-General is extremely concerned about the stark gender imbalance and lack of equitable geographic distribution in the membership of the human rights treaty bodies. The Secretary-General wishes to draw attention to paragraph 13 of General Assembly resolution 68/268, in which the Assembly encouraged States parties, in the election of treaty body experts, to give due consideration, as stipulated in the relevant human rights instruments, to equitable geographical distribution, the representation of the different forms of civilization and the principal legal systems, balanced gender representation and the participation of experts with disabilities in the membership of the human rights treaty bodies. In that regard, the Secretary-General strongly recommends that States parties, individually and through meetings of States**

parties, step up efforts to achieve equitable geographical representation in the treaty bodies when nominating new members or re-electing existing members.

28. **The Secretary-General recommends that States parties to the Optional Protocol to the Convention against Torture, which allows for each State party to nominate two candidates, take into consideration the principle of equitable geographical distribution and gender balance in nominating candidates for election to the Subcommittee on Prevention of Torture.**

29. **The Secretary-General also strongly recommends that States parties ensure the equal representation of women and men in the human rights treaty body membership through their considerate nomination of candidates and voting.**

30. **The Secretary-General further recommends that the present report be forwarded to the Chairs of the meetings or conferences of States parties, as well as to the Economic and Social Council, for consideration at the next meetings of those forums, in particular those organized to elect members of the treaty bodies.**

Annex

Regions

The statistics contained in the present report were calculated on the basis of the following regions. Membership of the regions is not fixed and this list does not constitute official recognition of their composition.

African States (54 States)

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cabo Verde
Cameroon
Central African Republic
Chad
Comoros
Congo
Côte d'Ivoire
Democratic Republic of the Congo
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
South Sudan
Sudan
Swaziland
Togo
Tunisia
Uganda
United Republic of Tanzania
Zambia
Zimbabwe

Asia-Pacific States (54 States)

Afghanistan
Bahrain
Bangladesh
Bhutan
Brunei Darussalam
Cambodia
China
Cyprus
Democratic People's Republic of Korea
Fiji
India
Indonesia
Iran (Islamic Republic of)
Iraq
Japan
Jordan
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Lao People's Democratic Republic
Lebanon
Malaysia
Maldives
Marshall Islands
Micronesia (Federated States of)
Mongolia
Myanmar
Nauru
Nepal
Oman
Pakistan
Palau
Papua New Guinea
Philippines
Qatar
Republic of Korea
Samoa
Saudi Arabia
Singapore
Solomon Islands
Sri Lanka
Syrian Arab Republic
Tajikistan
Thailand
Timor-Leste
Tonga
Turkmenistan
Tuvalu
United Arab Emirates
Uzbekistan
Vanuatu
Viet Nam
Yemen[a]

Eastern European States (23 States)

Albania
Armenia[b]
Azerbaijan[b]
Belarus
Bosnia and Herzegovina[c]
Bulgaria
Croatia[c]
Czech Republic[d]
Estonia[b]
Georgia[b]
Hungary
Latvia[b]
Lithuania[b]
Montenegro
Poland
Republic of Moldova[b]
Romania
Russian Federation[b]
Serbia[c]
Slovakia[d]
Slovenia[c]
The former Yugoslav Republic of Macedonia[c]
Ukraine

Latin American and Caribbean States (33 States)

Antigua and Barbuda
Argentina
Bahamas
Barbados
Belize
Bolivia (Plurinational State of)
Brazil
Chile
Colombia
Costa Rica
Cuba
Dominica
Dominican Republic
Ecuador
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela (Bolivarian Republic of)

Western European and other States (29 States)

Andorra	Luxembourg
Australia	Malta
Austria	Monaco
Belgium	Netherlands
Canada	New Zealand
Denmark	Norway
Finland	Portugal
France	San Marino
Germany[c]	Spain
Greece	Sweden
Iceland	Switzerland
Ireland	Turkey
Israel	United Kingdom of Great Britain and Northern Ireland
Italy	United States of America

Total: 193 Member States

States parties that are not members of the United Nations

Cook Islands[f]

Holy See[g]

Niue[h]

State of Palestine

Defunct former States parties

Czechoslovakia[d]

German Democratic Republic[e]

Union of Soviet Socialist Republics[h]

Yugoslavia[c]

(Footnotes to the annex)

[a] On 22 May 1990, the Yemen Arab Republic and the People's Democratic Republic of Yemen merged to form the Republic of Yemen. Between 6 April 1989 and 22 May 1990, both States were parties to the International Convention on the Elimination of All Forms of Racial Discrimination, resulting in an increase in the number of States parties from the Asia-Pacific States.

[b] The Russian Federation, as at 24 December 1991, maintained full responsibility for the rights and obligations of the Union of Soviet Socialist Republics under the multilateral treaties deposited with the Secretary-General. The territory that formerly constituted the Union of Soviet Socialist Republics, entirely within the Eastern European States, is now represented by the Russian Federation and 12 other independent States, 7 within the Eastern European States (Armenia, Azerbaijan, Estonia, Georgia, Latvia, Lithuania and the Republic of Moldova) and 5 within the Asia-Pacific States (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan). Belarus (as the Byelorussian Soviet Socialist Republic) and Ukraine (as the Ukrainian Soviet Socialist Republic) were each founding members of the United Nations in their own right.

[c] The following States succeeded to the treaty rights and obligations with effect from the dates indicated previously undertaken by the Socialist Federal Republic of Yugoslavia: Bosnia and Herzegovina (6 March 1992), Croatia (8 October 1991), Serbia and Montenegro (27 April 1992), Slovenia (25 June 1991) and the former Yugoslav Republic of Macedonia (17 September 1991). The Socialist Federal Republic of Yugoslavia ceased to exist upon the independence of those five successor States. With regard to Serbia and Montenegro, subsequently, the National Assembly of the Republic of Montenegro adopted its declaration of independence on 3 June 2006, following the referendum on 21 May 2006, which was conducted pursuant to article 60 of the Constitutional Charter of Serbia and Montenegro. Montenegro was admitted to membership in the United Nations by General Assembly resolution 60/264 on 28 June 2006. The Republic of Serbia continued the membership of Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system, on the basis of article 60 of the Constitutional Charter of Serbia and Montenegro, activated by the declaration of independence adopted by the National Assembly of Montenegro.

[d] Czechoslovakia ceased to exist on 1 January 1993, on which date the Czech Republic and Slovakia, as successor States to the former Czechoslovakia, considered themselves bound by the multilateral treaties deposited with the Secretary-General to which Czechoslovakia was party. Both States are within the Eastern European States.

[e] The German Democratic Republic acceded to the Federal Republic of Germany on 3 October 1990, resulting in one fewer State within the Eastern European States.

[f] The Cook Islands and Niue are self-governing territories in free association with New Zealand. The Convention on the Elimination of All Forms of Discrimination against Women was applied by New Zealand to the Cook Islands and Niue at the time of its ratification of the Convention on 10 January 1985. The Secretary-General, as depositary of multilateral treaties, recognized the full treaty-making capacity of the Cook Islands in 1992 and of Niue in 1994. Both States are parties to the Convention on the Rights of the Child. Currently, the Cook Islands and Niue are not parties to the Convention on the Elimination of All Forms of Discrimination against Women in their own right. For the purpose of the present report, both States are included with the other Pacific States in the Asia-Pacific States, notwithstanding that New Zealand is part of the Western European and other States.

[g] The Holy See has observer status at the United Nations and is a party to three human rights conventions: the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and the Convention on the Rights of the Child. It is not a member of any group of States.

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Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity

Report of the Secretary-General

Summary

The present report is a compilation of the responses to the note verbale from the Office of the United Nations High Commissioner for Human Rights dated 16 March 2015, which was sent to Member States and intergovernmental and non-governmental organizations, in compliance with resolution 68/176, inviting them to present practical proposals and ideas that would contribute to the strengthening of United Nations action in the field of human rights through the promotion of international cooperation based on the principles of non-selectivity, impartiality and objectivity. Responses have been received from the Governments of Bahrain, Cuba, the Democratic People's Republic of Korea and Qatar, and from the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, and the Public Defender of Georgia. They are reproduced in the report as received.

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I. Introduction

1. In its resolution 68/176, the General Assembly requested the Secretary-General to invite Member States and intergovernmental and non-governmental organizations to present further practical proposals and ideas that would contribute to the strengthening of United Nations action in the field of human rights through the promotion of international cooperation based on the principles of non-selectivity, impartiality and objectivity.

2. In compliance with paragraph 11 of the resolution, the Office of the United Nations High Commissioner on Human Rights, in a note verbale dated 16 March 2015, invited Member States and intergovernmental and non-governmental organizations to present practical proposals and ideas.

3. As at 29 July 2015, replies had been received from the Governments of Bahrain, Cuba, the Democratic People's Republic of Korea and Qatar, and from the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, and the Public Defender of Georgia, which are reproduced below as received. Additional replies received, if any, will be issued as addenda to the present report.

II. Replies received from Governments

Bahrain

[Original: Arabic]

Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity

To promote international cooperation in the field of human rights, and pursuant to General Assembly resolution 68/176, entitled "Strengthening United Nations action in the field of human rights through the promotion of international cooperation and the importance of non-selectivity, impartiality and objectivity", the Kingdom of Bahrain has taken a number of measures to strengthen its international human rights cooperation. These have included inviting British and United States experts on international law, including former United States State Department and British Foreign and Commonwealth Office lawyers, to provide legal advice on the establishment of accountability mechanisms, such as the investigations unit at the Office of the Public Prosecutor, the Secretariat for Grievances and the Commission on Prisoners and Detainees. The competent authorities in Bahrain have continued to learn from the experience of the United Nations Development Programme in formulating training programmes and workshops on human rights. Bahrain plans to sign a memorandum of understanding with the Office of the High Commissioner for Human Rights in order to enhance its ability to protect human rights. Bahrain also works with United Nations experts, who have submitted materials that have been used by the Ministry of the Interior as the basis for human rights training programmes for the security forces. That initiative is part of an ongoing effort to use input from international experts in order to provide Ministry staff with specialized training on criminal justice and criminal investigations. Training received by Ministry staff at the Royal Police Academy has been endorsed by the United Kingdom's Edexcel

examination board. The Ministry of the Interior has also enhanced its cooperation with international organizations by signing a memorandum of understanding with the International Committee of the Red Cross on monitoring prisons and reform institutions.

A number of Government institutions have continued to work with international organizations and experts. The Ministry of Justice and Islamic Affairs has started work with the International Institute of Higher Studies in Criminal Sciences, Italy, the Bingham Centre for the Rule of Law in the United Kingdom, the Slynn Foundation and the United Kingdom Inspectorate of Prisons to strengthen the rule of law in Bahraini institutions. The Ministry of Justice and Islamic Affairs also hosted a resident expert on case management from the United Kingdom's National School of Government. To push forward media reforms, the Ministry has drawn on global experience, including that of European and Arab consultants. As a result, the Supreme Authority for Audiovisual Media was established in June 2013, and the Ministry of Education has signed a memorandum of understanding with the International Bureau of Education of the United Nations Educational Scientific and Cultural Organization, pursuant to which the Bureau is providing technical assistance to help the Ministry formulate new curriculums and train teachers and staff involved in curriculum development.

Bahrain underscores its commitment to cooperating with national and international non-governmental organizations. The Government of Bahrain consults national non-governmental organizations to elicit and incorporate their views in reports that Bahrain is required to submit to United Nations treaty body committees and the universal periodic review mechanism. At the international level, a delegation from Amnesty International visited Bahrain in May 2014 and met with a number of human rights bodies in the country. Discussions have also taken place with a number of other non-governmental organizations with a view to promoting constructive cooperation.

Bahrain constantly aspires to strengthen its cooperation with friendly countries, United Nations mechanisms, international non-governmental organizations and other States. Bahrain stresses that such constructive cooperation, which is based on the principle of mutual respect and cooperation, without prejudice to State sovereignty and security, is consistent with His Majesty the King's agenda for reform and with the Government's action to reform its legislation and institutions in line with international standards.

Cuba

[Original: Spanish]

Cuba wishes to make the following observations:

- International cooperation in the field of human rights should be conducted in accordance with the principles of universality, objectivity, impartiality and non-selectivity as a true path to the promotion and protection of human rights worldwide.
- The adoption of resolutions selectively targeting countries and using content which those countries have had no hand in and do not acknowledge contradicts this principle and fails either to contribute effectively to protecting human

rights, or to guarantee the development of international cooperation on an equal basis for all States.

- The Universal Periodic Review mechanism is the most effective tool to promote international cooperation on an equal basis for all States.
- Cuba upholds the legal framework established in the Vienna Declaration regarding international cooperation in the field of human rights.
- For international human rights cooperation to be effective, there must be no more double standards, hegemonic positions or manipulation of the issue of human rights. Any constraints on development cooperation must also be eliminated.
- International cooperation should not be imposed, and should not adopt a focus that disregards each country's particular features and actual situation. No punitive action should be advocated.
- Cooperation should be based on realistic commitments to provide support where it is most important and effective in achieving the desired goals. International cooperation must respect the principle of transparency and the priorities of the States concerned. It should not be based on one-size-fits all solutions or models that seek to impose themselves as universal, even though they are not.
- International cooperation should adhere to international law and the terms and principles of the Charter of the United Nations, including sovereignty, territorial integrity and non-intervention in the internal affairs of States.
- To enhance this cooperation, effective representation and geographical rotation of the special procedures mandate holders of the Council and the experts of the treaty bodies must also be promoted. Also necessary are a fair balance in the composition of the staff of the Office of the United Nations High Commissioner for Human Rights, and the provision of resources for activities to promote human rights, in particular those relating to technical cooperation, human rights education and education in general, without preconditions and preconceived purposes determined by the interests of donors.
- An essential component of the effort to promote effective cooperation in the field of human rights is the adoption of measures aimed at preventing special procedures and other mechanisms of the human rights machinery from being manipulated by individuals, institutions or States for purposes other than defending human rights, using human rights as part of a political agenda. Accordingly, appropriate account should be taken of Article 9 of resolution 5/2 of the Human Rights Council regarding the sources of information to be used by Special Procedures Mandate-holders of the Human Rights Council. The sources must be credible, verified to the maximum extent possible, duly in line with human rights principles, and free of political motives incompatible with the provisions of the Charter of the United Nations.
- The unilateral measures imposed against certain countries as an instrument of political or economic coercion represent a major obstacle to the promotion of international cooperation in the field of human rights. They have a negative impact on the full enjoyment of all human rights, in addition to undermining the sovereignty, independence and right to self-determination of peoples. Based on

the above positions, Cuba has maintained a high level of cooperation and interaction with the procedures and mechanisms of the United Nations machinery in the field of human rights, which are universal and non-discriminatory. In that regard, it wishes to note the following:

- Cuba has consolidated positive dialogue with the treaty bodies created under international human rights treaties. It has also focused its fullest efforts on honouring its reporting obligations to the treaty bodies.

- Between 2010 and 2015, Cuba submitted seven national reports: the second periodic report to the Committee on the Rights of the Child (2011), the combined fourteenth to eighteenth periodic reports to the Committee on the Elimination of Racial Discrimination (2011), the combined second, third and fourth periodic reports to the Committee against Torture (2012), the combined seventh and eight periodic reports pursuant to the Convention on the Elimination of All Forms of Discrimination against Women (2010), the initial report regarding optional protocols I and II to the Convention on the Rights of the Child on children in armed conflict and on the sale of children, child prostitution and child pornography (2011 and 2014 respectively), the initial report to the Committee on the Rights of Persons with Disabilities and the initial report to the Committee on Enforced Disappearances.

- The Government of Cuba has also systematically provided all requested information for the special procedures of the Human Rights Council. Cuba has been sending information on an ongoing basis and has answered the majority of questions submitted by mandate holders during the reporting period within the established time frame.

- The Cuban Government fully intends to continue sending invitations to visit to mandate-holders appointed in a non-discriminatory manner by the Human Rights Council. It is in this spirit that an invitation was sent to the Special Rapporteur on trafficking in persons, especially women and children, to visit the country. Cuba also sent an invitation to the President of the International Committee of the Red Cross.

- Cuba has reported in two universal periodic review cycles, the first in 2009 and the second in 2013. Both reports have had positive results for Cuba, as they provided a clear demonstration of its achievements in human rights during this period.

- In expression of the unequivocal will of Cuba to engage in dialogue on all issues and with all States, on a basis of mutual respect, sovereign equality, self-determination and the recognition of the right of all peoples to choose their own political, economic and social system, the country has conducted bilateral dialogue on human rights with a number of countries and groups of countries. Some of these bilateral talks are held at established regular intervals.

In addition to cooperating with the human rights machinery, Cuba maintains strong cooperation links with many countries in the region and worldwide. Projects have been carried out for the promotion and protection of economic and social rights, focusing particularly on health and education. Cuba provides technical assistance in a number of fields. This assistance has benefited the most disadvantaged groups in many Third World countries, targeting indigenous peoples,

women and disabled persons in particular. Taking health projects alone, the following are noteworthy:

- "Operación Milagro" ("Operation Miracle"), under which 3.4 million free eye operations have been provided in 34 countries. Nine million people have also graduated from the "Yo sí puedo" (Yes I can) literacy programme and 1,113,000 people from the "Yo sí puedo seguir" (I can continue) post-literacy programme.
- There are currently more than 51,000 Cuban health workers volunteering in 67 countries worldwide.
- Cuba has also worked with the World Health Organization and other countries in the fight against Ebola in West Africa. More than 250 health workers from the Henry Reeve Brigade have volunteered in the most affected regions and some 4,000 other Cuban health workers are volunteering in the Ebola prevention programme in 32 African countries.

Democratic People's Republic of Korea

It is the consistent position of the Government of the Democratic People's Republic of Korea to deal with human rights issues on the principles of non-selectivity, impartiality and objectivity.

Notwithstanding these clearly defined principles, selectivity and double standards have been persisting in the United Nations and on the international human rights arena by the United States of America and other Western countries which openly infringe upon the dignity and sovereignty of developing countries on the absurd ground that they are not obedient to Western values.

The typical example is the "human rights resolutions" against the Democratic People's Republic of Korea forcibly adopted at previous sessions of the United Nations Human Rights Council and the sixty-ninth session of the United Nations General Assembly based on the "Report of the Commission of Inquiry on the Human Rights Situation of the Democratic People's Republic of Korea" full of deceit, fabrications and plots.

While paying no attention to improving its own miserable human rights situation cursed and condemned by the people the world over, the big country in question has been making frantic efforts to vilify and slander the human rights of a sovereign State with mobilization of its followers, escaped criminals and other human scum alike and to even take the issue to the United Nations Security Council in an attempt to secure a pretext for interference in internal affairs and aggression to overthrow the system. It constitutes the most serious violation of human rights.

At present the United Nations is degraded into a theatre of "human rights" rackets against developing countries and a place for political confrontation, with the result that the expectation and trust of the international community for an impartial role of the United Nations are fading away.

The prevailing situation requires that States Members of the United Nations remain ever more faithful to the principles of non-selectivity, impartiality, objectivity and mutual respect and international cooperation while thoroughly guarding against and opposing the politicization, double standards and confrontation.

As an imminent task, the United Nations and the United Nations Human Rights Council should revoke without delay the "human rights resolutions" against the Democratic People's Republic of Korea forcibly adopted under political conspiracy, fraud and pressure at the sixty-ninth session of the General Assembly and the previous sessions of United Nations Human Rights Council and pay new attention to the unjustifiable behaviour of the sponsors of those resolutions including Japan. They should also focus on addressing internationally accepted general issues of human rights and taking comprehensive measures, rather than taking issue with human rights situations of the specifically selected individual countries.

The Democratic People's Republic of Korea will actively contribute to strengthening the role of the United Nations in the field of human rights by adhering to the principles of non-selectivity, impartiality and objectivity and through international cooperation and thoroughly protect the human rights of its people from the infringement by the hostile forces by firmly safeguarding its national sovereignty.

Italy

With regard to the request by the General Assembly concerning the implementation of its resolution 68/176, Italian Authorities are in a position to provide the following information on the development cooperation system of Italy.

In the programme guidelines and orientations concerning Italy's development cooperation in the three-year period from 2014-2016, several references confirm that the system pays special attention to the human rights issue. These references have also been restated in the programme document for the three-year period from 2015-2017, mentioning in particular the activities of all United Nations agencies and programmes working in this field in order to strengthen Italian support in the promotion and protection of human rights.

With regard to the role of Italy in redefining the future post-2015 development agenda, consistently adjusting its actions according to the changes in the international scenario, Italy supports the proposal of a single framework of reference in which to revise the Millennium Development Goals and define the sustainable development goals.

As generally voiced in the ongoing debate, this new framework will have to take account of the complementarity between the three dimensions (social, economic and environmental) of sustainable development and of the importance of several crucial aspects, such as the use and management of natural resources, overcoming inequalities, promoting job creation, peace, good governance and respect for human rights, as the best political groundwork for receiving cooperation interventions. Thanks to its global scope, the post-2015 development agenda will impose a review of the traditional approach to development cooperation, which can no longer be based on a clear distinction between donor countries and beneficiary countries, or on the centrality of a single player: the State. In this context, Italy intends to draw attention to some of the issues that particularly qualify its cooperation efforts, such as respect for human rights and gender equality, food security and nutrition, upgrading integrated rural development based on the role of small farmers-producers, and developing the private sector through local partnerships and networks of small and medium-sized enterprises.

On a more general note, Italy's international foreign policy is principally inspired by the pursuit of an equitable world in which all global public goods, and especially peace, justice, economic stability, the environment, knowledge and humanitarian aid, are guaranteed to all humankind.

Development cooperation, an integral part of Italian foreign policy, has joined international efforts to achieve the Millennium Development Goals by 2015, by concentrating available resources on those countries and sectors which are capable of best expressing their potential.

Its main strategic objectives are the following:

(a) Sustain democracy, uphold human rights and gender equality and contribute to eliminating all forms of discrimination, including those that limit the rights of disabled people and the exploitation of minors;

(b) Reduce poverty by creating decent new job opportunities and removing social and economic inequalities that, also in the countries with positive growth trends, are becoming worryingly manifest, giving rise to factors of social instability and exclusion;

(c) Support partner countries' development policies also through policies aimed at promoting the private sector and entrepreneurship, especially of women, and access to international markets and trade;

(d) Improve food security and develop agriculture;

(e) Contribute to global health by intensifying the struggle against inequalities in individuals' right to health (in poorer countries, rural areas and urban suburbs, among minorities and vulnerable groups);

(f) Contribute to basic universal education;

(g) Highlight the need for solidarity and the international role of Italian volunteer workers;

(h) Prevent and mitigate the effects of climate change;

(i) Contribute to preventing conflicts by supporting peacekeeping, reconciliation and post-conflict stabilization processes, and the consolidation and reinforcement of democratic institutions also and mainly through effective coordination with other European Union member States and institutions;

(j) Guarantee humanitarian aid.

In the 2014-2016 programme guidelines and orientations, chapter 3.1 is properly devoted to the human rights' issue (Promoting human rights, gender equality, participatory democracy, improving governance and supporting civil society).

Focus on the quality of the political and democratic context, and respect for human rights in general and of women in particular, will constitute the first priority in Italy's future cooperation activities. These themes will be incorporated into the STREAM programme goals and achieved both through targeted initiatives and through the activities across all financed initiatives.

Support will be given to local institutions and to the organizations promoting and protecting civil, political, economic, social and cultural rights, as defined in the international conventions to which Italy has adhered.

Fostering the enhancement of democratic ownership means promoting forms of direct support to local institutions, social or stakeholder networks, trade unions and local civil society organizations, which voice the needs of different social players in developing countries. It does not merely imply supporting the requests of claimants with their Governments but promoting and improving the interaction between the State, intermediate bodies and the citizens, and promoting respect for human rights and principles of transparency. To this end, Italian cooperation will be inspired by, inter alia, the Agenda for Change, which closely interlinks development, respect for human rights, democracy and good governance.

Building up local capabilities should not be conceived as a mere transfer of knowledge; it should be achieved by supporting internal change within the institutions and among the actors of partner countries, with the aim of enabling them to acquire the awareness and means to locally manage the course of their development.

In the priority countries that the international community considers to be eligible for budget support, this instrument will continue to be used in order to improve the quality of aid and achieve the goal of reducing poverty and of sustainable development, in compliance with the international principle of fostering the ownership of partner countries.

Action Plan on Disability

Disabilities are particularly relevant in developing countries and are a condition often associated with poverty, exclusion and discrimination, entailing heavy social, economic and cultural repercussions.

In line with the terms of the United Nations Convention on the Rights of Persons with Disabilities, adopted in 2006 by the General Assembly, in 2010 Italian Cooperation approved the Guidelines on Disability and in June 2013 adopted the Italian Cooperation's Action Plan on Disability in order to implement them.

The Action Plan is outlined in the two-year action programme promoting the rights and integration of disabled persons, developed by the members of the National Observatory on the Condition of Persons with Disabilities, and implemented by the Presidential Decree of 4 October 2013. The Plan sets forth the principle of including disabilities in every phase of development policymaking and practices and takes into consideration all actions aimed at promoting equal opportunities for disabled persons. The Plan began to be implemented in December 2013 with a number of first information and awareness-raising actions.

At the beginning of 2014, the first technical working groups were established for each one of the following sectors:

(a) Accessibility and usability of locations, goods and services;

(b) Managing humanitarian aid and emergency situations so as to include disabled persons;

(c) Inclusive education;

(d) Data collection and analysis on initiatives financed during the last five years;

(e) Drafting a document reviewing the Organization for Economic Cooperation and Development Development Assistance Committee (OECD/DAC) categories, in order to increasingly include disabilities.

The working groups will continue to work in support of the implementation of the actions set forth in the Plan to guarantee the mainstreaming of disability-related issues, with the aim of making a significant contribution to the social inclusion of disabled persons and of assuring a progressive and innovative long-term strategy in line with international standards.

Action by the Development Cooperation Steering Committee on gender-linked issues

The Development Cooperation Steering Committee, by leveraging several international instruments, has long focused its attention on gender-linked issues and the empowerment of women. More specifically, the goal of equal treatment for women and men and upholding women's rights have been sanctioned for decades in international conventions like the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Platform for Action that followed the Fourth World Conference on Women, held in Beijing in 1995. Furthermore, these issues are also enshrined in the Millennium Development Goals and, even more so, in the United Nations post-2015 development agenda, as well as in the intergovernmental debate within the Open Working Group on Sustainable Development Goals, which resulted from the 2012 Conference on Sustainable Development, held in Rio de Janeiro, Brazil, 20 years after the Earth Summit.

Gender-related issues represent the shared values and founding principles for action also for the European Union, which pursues a twin-track approach on gender equality in development cooperation, providing for the adoption of measures specifically targeted on tackling gender inequalities while, at the same time, mainstreaming gender-linked issues into all aspects of development policymaking. In 2010, the European Union had already adopted its Action Plan on Gender Equality and Women's Empowerment in Development 2010-2015.

Italy's development cooperation actions on gender-linked issues have made significant progress in the last few years, the most relevant of which are the following:

1. The adoption of the Guidelines for Gender Equality and the Empowerment of Women (approved by the Development Cooperation Steering Committee in November 2010);

2. The introduction in December 2012 of the new effectiveness marker, to be applied to all Development Cooperation Steering Committee initiatives. The marker considers gender-linked issues to be the most cross-cutting in all Italian Cooperation's initiatives and programmes, alongside the reduction of poverty and the environment;

3. The collaboration between the Development Cooperation Steering Committee and the Overseas Agronomic Institute that, since 2012, has been promoting research studies mainstreaming gender-linked issues into initiatives for rural development (food security, climate change, green growth) and whose results were presented at an international Event-Seminar (October 2012) attended by all the parties concerned, the partner countries and the Rome-based United Nations

agriculture and nutrition agencies (the Food and Agriculture Organization of the United Nations, the International Fund for Agricultural Development and the World Food Programme);

4. The publication, in November 2013, of the European Commission's Third Report on the outcome of the European Union Plan of Action on Gender Equality and Women's Empowerment in Development, which highlights that Italy, in the face of a well-known general reduction in bilateral aid, actually increased its support to Gender Equality and Women's Empowerment issues which, out of all Italian official development aid allocated in the period surveyed, recorded a 39 per cent rise.

This is the acknowledgement of a systematic action that ranks Italy as lead donor in gender-linked issues in several priority countries (particularly in Palestine and Senegal, but also in other particularly sensitive areas like Afghanistan, thanks to the creation of a unit to combat the abuse of women and the financing of non-governmental organizations with the aim of raising rural populations' awareness of the rights of women). Now is the time to capitalize on these results. Within Italy's long-dated efforts to enhance the effectiveness or its cooperation activities, the Development Cooperation Steering Committee therefore intends to pass a Comprehensive Action Plan, whose founding elements are now being drafted, and which might have an even greater impact on improving Italian initiatives on gender inequalities and on the empowerment of women.

More specifically, the goals of the Action Plan will include:

- Joint multi-stakeholder development and implementation of an "Italian position" on gender equality and the empowerment of women, in view of the international debate aimed at defining the post-2015 development agenda;
- Developing a Plan for the Empowerment of Women in view of the Expo Milano 2015, principally focused on the crucial role played by women in the field of food security and nutrition. The participation of Italian Cooperation in Expo Milano 2015 already envisages a chapter devoted to women's empowerment, which is planned to play a key role therein;
- Improving the effectiveness of the "Italian cooperation aid system", by ensuring that gender equality is a universal and cross-cutting role throughout Italian cooperation actions (by adopting the aforesaid twin-track approach to gender equality).

This action should aim at achieving the following expected results:

1. The production of "readable" case studies according to European Union and OECD/DAC criteria (in English and in Italian) on successful cooperation programmes;

2. A workplan for international meetings especially focused on preparing for Expo 2015, by drafting materials (toolkits, criteria and indicators tested on at least three Development Cooperation Steering Committee development programmes) to be used also for Italy's participation in the Group of 8 New Alliance for Food Security and Nutrition;

3. The creation of a network of gender advisers and gender focal points to operate in the Local Technical Units, with the aim of providing online technical assistance in this area.

Qatar

[Original: Arabic]

Strengthening international cooperation in line with the principles of non-selectivity, impartiality and objectivity

One of the most outstanding areas of international cooperation is that of human rights. International human rights cooperation seeks to protect humanity itself, wherever there are people, without distinction of any sort. It is a pre-eminent means for countries to express their desire and determination to guarantee that the rights of their nationals and those subject to their jurisdiction are respected and protected. It demonstrates that States recognize those rights and freedoms with respect to the citizens and nationals of other countries. In so doing, it creates a global climate in which the values of peace, freedom, security and equality prevail and humanity advances towards growth and prosperity.

International relations and, in particular, human rights, have developed considerably since the Charter of the United Nations was signed. One of the main purposes of the United Nations, as affirmed in Article 1 of the Charter, is to achieve international cooperation and promote respect for human rights for all without distinction. However, although the majority of States wish to respect the purposes set forth in the Charter and have ratified and become parties to numerous human rights instruments, it does not follow that international cooperation is invariably based on neutrality, objectivity and non-selectivity. Many international relationships are based on principles that depart from sovereignty and equality, or on the balance of powers and political and economic interests.

The current international situation shows that the issue of human rights is in some cases used for political ends that are far removed from the noble purposes and principles that underpin human rights. Political and economic interests are sometimes achieved either by using the issue of human rights as a pretext or by ignoring human rights violations. Such policies undermine the fundamental principles of human rights, the cornerstone of which is the absolute equality of all humanity. United Nations human rights bodies have expressed dismay and concern at that approach. In numerous resolutions, they have underscored need to take an objective and non-selective approach to human rights, and to eschew double standards and politicization.

I. The United Nations level

Since the Charter of the United Nations was signed, the Organization has symbolized the values of peace, tolerance and the coexistence of peoples and respect for human rights for all without distinction of any sort. It has been the finest expression of humanity's aspiration for cooperation aimed at protecting human rights. The Charter was deeply influenced by the circumstances in which it was signed. The current instability of the international system makes it essential to consider revisiting certain provisions of the Charter in the light of global developments; the political, economic, social and cultural impact and challenges of globalization; and, in particular, the threat posed at the international level by terrorism, whose impact is sometimes as powerful as that of conventional warfare.

In view of the foregoing, we wish to set out and justify the following ideas for the restructuring of the United Nations:

1. In the light of the Charter of the United Nations, Article 109, paragraphs 1 and 2, the provisions of the Charter should be reconsidered with a view to granting the General Assembly greater powers to maintain international peace and security. Such powers should be balanced with those of the Security Council, and controls should be put in place to ensure effective coordination and cooperation and avoid any conflict of competences. The Charter currently grants the Security Council and, in particular, its five permanent members, the authority to veto and suppress any resolution on international peace and security. The National Human Rights Committee believes that such authority is incompatible with what ought to be the structural principle of the United Nations, namely to act as a global forum for democratic values. That proposal may meet with resistance from the five permanent members of the Security Council. However, it can be achieved if all States Members strengthen their dialogue and mutual understanding with the five permanent members, stressing that the international community, including the permanent members, stands to gain.

2. The National Human Rights Committee believes that expanding the membership of the Security Council would make that body more democratic and have a positive effect on the United Nations and the contemporary international system as a whole.

3. The right of the five permanent members to use their veto must be reconsidered, particularly in respect of resolutions concerning human rights issues. Such issues do not involve one or two countries alone; they affect the interests of the entire international community. If any country violates human rights, and the Security Council cannot adopting a resolution in that regard owing to selectivity or lack of objectivity, the interests of numerous other countries could be affected. Policies that are selective or lack objectivity can also spur hostility and revenge, hence encouraging terrorism, which poses a threat to the international community as a whole.

II. International relations

We believe that international cooperation based on objectivity, impartiality and non-selectivity can be promoted in the following ways:

1. States whose human rights policies are selective and lack objectivity and impartiality should be excluded from economic and cooperative relationships in various areas.

2. Various types of economic and cooperative partnership should be developed with States that address human rights issues impartially and objectively.

3. National human rights agencies should coordinate and exchange information on all human rights issues.

4. The international community should cooperate to secure the financial resources needed for United Nations human rights programmes and activities.

III. Human rights treaty bodies and other institutional mechanisms

1. Human rights treaty bodies and other institutional mechanisms should be strengthened, and effective human rights cooperation and partnership with

non-governmental organizations should be supported and promoted, particularly as regards the exchange of information.

2. Effective coordination among all United Nations bodies should be improved and developed in order to strengthen and protect human rights.

3. All United Nations agencies and staff members should be given all necessary protection against the use of the veto by the five permanent members of the Security Council.

4. International investigators should be given further safeguards in order to ensure their neutrality, impartiality and objectivity and guarantee their security while undertaking their duties, which are sensitive and affect the interests of peoples and States.

5. The necessary mechanisms should be put in place in order to hold accountable international investigators and committees that are conclusively proved to have fulfilled their duties without due impartiality and objectivity.

III. Replies from intergovernmental organizations

Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe

Introduction

In numerous documents of the Commission on Security and Cooperation in Europe and the Organization for Security and Cooperation in Europe (OSCS), the participating States have highlighted the importance of practical cooperation among OSCE participating States in the human dimension and have agreed that promoting progress in the human dimension remains a key function of the OSCE. In Helsinki 1992, the participating States reaffirmed their commitments to the Charter of the United Nations and pledged "to improve contact and practical cooperation with appropriate international organizations", and "to expand its relations with all organizations and institutions that are concerned with the promotion of comprehensive security within the OSCE area" (Maastricht 2003).

In Istanbul (1999), the OSCE participating States committed themselves to joint measures based on cooperation, both in the OSCE and "through those organizations of which we are members, in order to offer assistance to participating States to enhance their compliance with OSCE principles and commitments. We will strengthen existing cooperative instruments and develop new ones in order to respond efficiently to requests for assistance from participating States". The participating States highlighted in Maastricht 2003 that their cooperation with other organizations and institutions currently encompasses political dialogue, coordination and structured cooperation on "thematic or regional issues across the OSCE region".

Current practice

In accordance with its mandate, the Office for Democratic Institutions and Human Rights (ODIHR) cooperates in the human dimension with a wide range of international and regional organizations based on formally established and informal cooperation mechanisms. Although OSCE participating States are primarily responsible for implementing fundamental human rights and democratic principles at

the national level on the basis of OSCE human dimension commitments, international and regional organizations with human rights and democratization mandates play complementary roles in promoting, protecting and enhancing the universality of human rights and democratic governance principles, together with civil society organizations.

To assist OSCE participating States in the implementation of their human dimension commitments, ODIHR has entered into formal cooperation mechanisms on the basis of memorandums of understanding or cooperation agreements[1] with international and regional organizations. These formal cooperation mechanisms regulate joint programming and project implementation, technical advice to Governments, exchanges of good practices, the setting up of institutional links and liaison officers to further information exchange, joint exchanges between the organizations in meetings and participation in conferences, as well as joint communication and press releases, among others.

Other informal cooperation mechanisms between OSCE and international and regional organizations also exist, such as regular consultations and staff meetings between the OSCE Field Operations and OSCE Institutions including ODIHR and the United Nations. These working-level meetings focus inter alia on coordinating programming and policymaking, strengthening existing links and identifying new approaches for cooperation between regional and international human rights mechanisms. In addition, the OSCE and international and regional organizations cooperate in the form of information exchange with regard to United Nations treaty body reporting, judicial mechanisms and other human rights-related instruments.

In providing assistance, ODIHR cooperates with a number of regional and international organizations in the implementation of joint activities and projects to ensure coherence in the provision of assistance to OSCE participating States, and avoid duplication. Examples of such cooperation include the hosting of the Declaration of Principles meeting in the field of elections, which gathers key counterparts in the field of elections such as UNDP. The ODIHR regularly facilitates a criminal justice forum in Central Asia, bringing together OSCE Field Operations and United Nations entities such as United Nations Office on Drugs and Crime, UNDP, the Council of Europe and the European Union.

ODIHR collects and exchanges information and data during the conduct of fact-finding, observation and assessment missions. These activities result in specific recommendations for OSCE participating States to enhance implementation of human dimension commitments in assessments and reports.

ODIHR also contributes information and expertise to established regular reporting mechanisms and procedures of their international and regional counterparts, particularly in the fields of human rights and the rule of law. Examples are the ODIHR contributions to the Universal Periodic Review process or the support provided to OSCE participating States in relation to United Nations treaty body reporting. ODIHR also provides expertise and input to United Nations studies.

Cooperation between ODIHR and international and regional organizations takes many forms, and as such best practices exist where coordination and cooperation is effective, leading to the identification of human dimension implementation gaps and

[1] The OSCE has signed memorandums of understanding and cooperation agreements with UNHCR, OHCHR, UNDP and the Council of Europe.

the setting of international standards for the benefit of OSCE participating States and civil society in the OSCE region. The ODIHR cooperates closely in the fields of democratization, elections, human rights, tolerance and non-discrimination, and Roma and Sinti issues with United Nations agencies.

In the field of war crimes justice, ODIHR has cooperated with the United Nations International Criminal Tribunal for the former Yugoslavia and OSCE Field Operations in South Eastern Europe focused on capacity-building of national actors in the handling of war crimes cases.

With regard to tolerance and non-discrimination ODIHR assists OSCE participating States and civil society in their efforts to prevent and respond to hate-motivated crimes and to promote mutual respect and understanding. ODIHR has developed a range of assistance programmes including legislative assistance, capacity-building of law enforcement, data collection, dialogue and cooperation between government and civil society, education and awareness raising. Through its interactive website hatecrime.osce.org, ODIHR disseminates data and initiatives on hate crimes. In this regard, ODIHR coordinates and works closely with other international organizations (Office of the High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, Council of Europe, European Commission on Racism and Intolerance, UNESCO, UNHCR) in the compilation of information for the its hate-crime reporting website. This data is prominently featured on the website. In the area of promotion of mutual respect and understanding, ODIHR has worked closely with UNESCO on the development of Guidelines for Educators on Countering Intolerance against Muslims.

ODIHR enjoys excellent cooperation with United Nations entities of the Secretariat (Electoral Assistance Division, Department of Political Affairs, Department of Peacekeeping Operations, UNDP, UN-Women) in its elections-related activities. This includes in-country meetings with United Nations bodies during needs assessment missions, election observation, and follow-up activities; and coordination of organizational approaches and activities through the framework of the Declaration of Principles Group for International Election Observation, endorsed under United Nations auspices in 2005.

In its human rights-monitoring activities, OSCE/ODIHR places particular emphasis on the need to base its findings on first-hand information collected in adherence with the principles of transparency, accuracy and impartiality. ODIHR has been engaged in monitoring public assemblies across the OSCE since 2011. In its choice of participating States and events to be monitored, ODIHR attempted to ensure geographical balance and the coverage of a variety of different contexts across the OSCE area, thus adhering to the principle of non-selectivity. To preserve the integrity of the sample, only events selected by ODIHR on the basis of set criteria are observed. The monitoring findings, as published by ODIHR, have been included in ODIHR Universal Periodic Review submissions, thus contributing to the Universal Periodic Review process by providing information based on the principles of non-selectivity, impartiality and objectivity, which are at the core of ODIHR assembly monitoring work.

The ODIHR Contact Point for Roma and Sinti issues is mandated to assist OSCE participating States to implement the commitments relating to Roma and Sinti, such as the 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area and subsequent Ministerial Council decisions in 2008,

2009 and 2013. The Action Plan targets education, social, economic issues, Roma and Sinti participation and their situation in crises and post-crises situations by employing an underlining principle of combating discrimination. The ODIHR Contact Point for Roma and Sinti issues published status reports in 2008 and 2013 and specific reports on the situation of Roma and Sinti on field assessment visits to Romania (2007), Italy (2008) Hungary (2009), Ukraine[2] and Slovakia (2014). These independent assessments feed into the Universal Periodic Review process while in its overall work ODIHR's Roma and Sinti programme closely collaborates and coordinates with the respective United Nations agencies, particularly with UNHCR in addressing issues relating to civil registration of Roma and the situation of Roma in crises situations or with UNDP and OHCHR to create synergies with regard to addressing the human rights situation of Roma vis-à-vis national authorities.

Recommendations

Greater awareness is needed and further steps should be taken to strengthen cooperation between the OSCE and the United Nations, in particular related to gaps in the content of OSCE commitments as compared to standards set by the United Nations, particularly in the areas of freedom of expression and media and Internet freedoms. Although there are no contradictions as such between the human dimension commitments and human rights standards as set forth in the United Nations, differences in scope and existing gaps should not lead to major discrepancies. Strengthened cooperation thus contributes to the enforcement of existing international standards, the development of common interpretations and a common reflection on soft law standards.

- ODIHR and the United Nations should continue to formalize and institutionalize the modalities for their cooperation in order to strengthen action-oriented cooperation in an innovative and dynamic manner by building on established memoranda of understanding or other formal arrangements, and by enhancing informal cooperation mechanisms; in particular, the OHCHR and ODIHR should build on the Joint Declaration signed in 2014;
- ODIHR should systematically share, reference and build on jurisprudence and standards elaborated by the United Nations, and vice-versa. The United Nations should take stock of OSCE commitments and their presence in the field, where the majority of OSCE officials operate (2,000 out of 2,800 OSCE staff are deployed in field operations);
- ODIHR and the United Nations should be aware of and promote their specific comparative advantages when engaging with other organizations;
- ODIHR and the United Nations should mainstream the culture of cooperation and solidarity within their structures. Furthermore, informal contacts and cooperation should be ensured despite staff turnover or a lack of funding in some areas of assistance;
- ODIHR and the United Nations should be more strategic in their cooperation, and should work together not on short-term interventions, but also in terms of medium- and long-term planning and the implementation of interventions, in particular programmes and projects;

[2] Situation assessment report on Roma in Ukraine and the impact of the current crisis (http://www.osce.org/odihr/124494).

- ODIHR should enhance partnerships and increase its alignment at the country level when undertaking actions to effectively respond to recommendations by United Nations human rights monitoring mechanisms;
- ODIHR could jointly develop with partner organizations tools providing guidance to OSCE participating States, and should systematically cross-reference their respective standards and tools;
- ODIHR should continue to provide and systematize their involvement in the United Nations Universal PR process and the examination of country reports by United Nations human rights treaty monitoring bodies;
- ODIHR could organize expert meetings on data collection, particularly in the area of gender, anti-corruption and good governance, together with other international organizations, in particular the United Nations;
- ODIHR should make more use of data collected by other international organizations, or should feed data into their existing data collection mechanisms, including the Universal Periodic Review and the treaty bodies;
- ODIHR and OHCHR should set up a joint ad hoc working group to take stock of the current forms of cooperation and to discuss concrete measures to implement the recommendations from the Human Dimension Seminar on Improving OSCE effectiveness by enhancing its cooperation with relevant regional and international organizations, held in Warsaw from 12 to 14 May 2014.

IV. Replies from non-governmental organizations

Public Defender of Georgia

The Public Defender (Ombudsman) of Georgia several recommendations to Georgian authorities for effective implementation of universally accepted human rights standards. These recommendations are reflected in the Annual Parliamentary Report of the Ombudsman of Georgia for 2014.

The recommendations refer to the following:

1. To initiate procedures for ratification of the International Convention for the Protection of All Persons from Enforced Disappearance 2006;

2. To consider the recommendation of the Committee on the Elimination of Discrimination against Women for establishing temporary special measures — quota system;

3. To consider the recommendation of the Committee on the Elimination of Discrimination against Women and introduce relevant amendments to the Civil Code of Georgia for the mandatory judicial permit for the marriage between the ages to 16 and 18;

4. To launch procedures for signature and ratification of the International Labour Organization Maternity Protection Convention No. 183 and to ensure participation of all interested stakeholders in this process;

5. To ratify the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities;

6. To direct State Policy and Strategy towards persons with disabilities, including women, in order to implement article 6 of the United Nations Convention on the Rights of Persons with Disabilities;

7. To revise legislation, draft laws, policy and programmes in order to reflect principles provided by the Madrid International Plan of Action on Ageing and the Regional Implementation Strategy;

8. To implement the Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters and to set detailed procedures in the legislation of Georgia for realization of rights mentioned therein.

- The Public Defender of Georgia would like to express his readiness to actively cooperate with the United Nations relevant bodies for fulfilment of these recommendations by Georgia.

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Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights, including ways and means to promote the human rights of migrants

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 69/167 on the protection of migrants. In that resolution, the Assembly requested the Secretary-General to submit to it, at its seventieth session, a report on the implementation of the resolution.

A note verbale was sent from the Office of the United Nations High Commissioner for Human Rights on behalf of the Secretary-General requesting relevant information and highlighting the challenges and best practices in promoting and protecting the human rights of migrant domestic workers, regardless of their migration status. Written submissions were received from States, intergovernmental organizations and non-governmental organizations.

The present report contains an analysis of the ways and means to promote and protect the human rights of migrants, with a focus on the human rights challenges faced by migrant domestic workers. The report contains a discussion of some key elements of a human rights-based approach to migration and domestic work and recommendations on promoting and protecting the human rights of migrant domestic workers.

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I. Introduction

1. In its resolution 69/167, the General Assembly reaffirmed the duty of States to effectively promote and protect the human rights and fundamental freedoms of all migrants, especially those of women and children, regardless of their migration status, in conformity with the Universal Declaration of Human Rights and the international instruments to which they are party, and invited Member States to consider ratifying relevant conventions of the International Labour Organization (ILO), including Convention No. 189 on decent work for domestic workers. In the same resolution, the Assembly also emphasized the importance of protecting persons in vulnerable situations and called upon States to provide for the protection of the human rights of women migrant workers, to promote fair labour conditions, and ensure that all women, including care workers, are legally protected against violence and exploitation and to protect the human rights of migrant children, given their vulnerability.

2. Written submissions were received from States and intergovernmental and non-governmental organizations in response to a note verbale from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Secretary-General requesting information on the implementation of resolution 69/167.[1]

3. The present report focuses on the human rights challenges faced by migrant domestic workers (sect. II); examines some key elements of a human rights-based approach to migration and domestic work (sect. III); and contains recommendations on promoting and protecting the human rights of migrant domestic workers (sect. IV).

II. Promotion and protection of the human rights of migrant domestic workers

4. Worldwide, at least 52.6 million people are engaged as domestic workers.[2] Although these women, men and children carry out a wide variety of essential tasks, including cleaning, ironing, gardening, cooking, driving and caring for children and the elderly in private households, what they do is not always considered work. Their contributions to the country in which they live and work are often unrecognized, and their living and working conditions are sometimes exploitative.

5. Migrants make up a substantial proportion of all domestic workers. Irregular migrants in engaged domestic work are at a particularly high risk of being exploited

[1] The text of most of the submissions received are available from www.ohchr.org/EN/Issues/Migration/Pages/ProtectionofMigrantsreport.aspx. References to the practices of States in this report are drawn mainly from these submissions. Any reference to the practice of an individual State is provided as an illustrative example only and does not reflect an exhaustive analysis of State practice.

[2] This estimate is deliberately conservative. The true number is likely to be close to 100 million (see ILO, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (ILO, 2013).

and ill-treated. They can be denied their dignity as human beings and are often unable to access essential services.[3]

6. In recent years, international migration patterns have changed significantly. International migrants tend to move within, rather than between, major regions. Migration within the South has become as significant as that from South to North. Migration takes myriad forms and, either temporarily or for long periods, migrants may become domestic workers at some point on their journey.

7. Globally, men and women migrate in more or less equal numbers, and 48 per cent of international migrants are women.[4] However, international migration varies by occupation and location according to gender. In Italy, for example, 85 per cent of the immigrants from Cape Verde are women, most of whom work as domestic workers, whereas 96 per cent of immigrants from Senegal are men, most of whom work as street vendors.[5] Worldwide, 7.5 per cent of all employed women are domestic workers. In the Middle East, 31.8 per cent of all employed women are domestic workers.[6]

8. Domestic work is traditionally done mostly by women, and it is still regarded as women's work that does not require qualifications. Most domestic workers (83%) in all countries are women. In Uruguay, for example, more than 99 per cent of all domestic workers are women. Although domestic work has evolved and become more professionalized in some regions, women continue to dominate the sector, and in some regions up to 90 per cent of migrant domestic workers are women.[7] It is estimated that, in total, 17 to 25 million women migrants work in the domestic service sector.[8] ILO has suggested that women are migrating in greater numbers in response to the demand for domestic work.[9]

9. The tasks involved in domestic work (cleaning, ironing, cooking and caring for children or the elderly) are regarded by some as degrading. Women migrants who work as domestic workers are not always considered as workers with human rights; sometimes they are viewed as helpers, or even family members, who are dependent on charity. In practice, the generalized perception that domestic work is women's work increases the vulnerability of these women.

10. The most recent estimates available indicate that, worldwide, over 15.5 million children between 5 and 17 years of age are engaged in domestic work, and that

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[3] Migrants in an irregular situation are persons who are not authorized to enter, stay or engage in a remunerated activity in a transit or destination country. See: United Nations and OHCHR, *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation* (New York and Geneva, 2014).

[4] See Department of Economic and Social Affairs, Population Division, "International Migration Report 2013", 2013.

[5] See Hein de Haas, *The Myth of Invasion: Irregular Migration from West Africa to the Maghreb and the European Union* (International Migration Institute, 2007).

[6] See ILO, *Domestic Workers across the World*.

[7] See Victor Tokman, *Domestic Workers in Latin America: Statistics for New Policies*, Women in Informal Employment: Globalizing and Organizing Working Paper No. 17 (Cambridge, June 2010).

[8] See International Domestic Workers' Network, "Domestic workers worldwide: summary of available statistical data and estimates", June 2010.

[9] ILO, "Global Action Programme on Migrant Domestic Workers and their Families" (available from www.ilo.org/migrant/capacity-building-and-technical-assistance-on-labour-migration/projects/WCMS_222567/lang--en/index.htm).

73 per cent of them are girls and that half are under the international minimum working age of 15.[10] When they work as domestic workers, children are vulnerable to a whole range of human rights violations and abuses; however, because they are children, these violations and abuses assume particular gravity. Child domestic workers may be exposed to dangerous products or made to undertake dangerous tasks, and they are very likely to be victims of forced labour practices and slavery.

11. Across all regions, the proportion of domestic workers who are migrants has steadily increased in recent decades. To illustrate this, in the first half of 2012 alone, 160,000 Ethiopians were reported to have migrated to Saudi Arabia to work in the domestic sector.[11] Information provided in 2010 by the Organization for Economic Cooperation and Development estimated that 47 per cent of international migrants in Africa are women, many of whom are engaged in the domestic sector.[12] Nearly half of all Indonesian migrants and a third of all Filipino migrants are domestic workers, of whom 87.5 per cent and 93.9 per cent, respectively, are women.[13] Saudi Arabia employs an estimated 1.5 million domestic workers, primarily from Indonesia, the Philippines and Sri Lanka.[14] In Argentina, Chile and Costa Rica, respectively, 39.3 per cent, 37.1 per cent and 47.1 per cent of women migrants are employed in domestic services.[7] In South Africa, it was reported that more than one million domestic workers were employed in 2007 (75% of whom were women). The actual number is far larger, because many irregular migrants work in the sector.[15] In New York State in the United States of America, 99 per cent of domestic workers are foreign-born and 93 per cent are female.[16] In the European Union, a large number of domestic workers are migrants, a proportion of whom work irregularly. Between 2002 and 2011, Italy and Spain regularized the status of some 500,000 irregular third-country nationals employed in domestic work.[17] Italy has over 1.2 million domestic workers, most of whom are migrant women. In France, over 50 per cent of migrant women are employed in domestic work.[16]

12. Migration for domestic work is often triggered by demand in countries of employment. For example, in countries with an ageing population there is a rising demand for care workers, which is not always met by nationals. It is estimated that

[10] See ILO and the International Programme on the Elimination of Child Labour, *Ending Child Labour in Domestic Work and Protecting Young Workers from Abusive Working Conditions* (Geneva, ILO, 2013) (available from www.ilo.org/public/libdoc/ilo/2013/113B09_111_engl.pdf).

[11] See Regional Mixed Migration Secretariat, "Migrant smuggling in the horn of Africa and Yemen: The social economy and protection risks", 2013.

[12] See also Economic Commission for Africa, "Challenges in promoting and protecting the human rights of migrant domestic workers, regardless of their migration status" in the submission of the Economic Commission for Africa.

[13] See Regional Thematic Working Group on International Migration including Human Trafficking, *Situation Report on International Migration in East and South-East Asia* (International Organization for Migration, Bangkok, 2008).

[14] See International Trade Union Confederation, "Decent work, decent life for domestic workers", 2011.

[15] See Helen Schwenken and Lisa-Marie Heimeshoff (eds.), *Domestic workers count: Global data on an often invisible sector* (Kassel, Kassel University Press, 2011).

[16] See United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the International Trade Union Confederation, "Domestic workers count too: implementing protection for domestic workers", 2013.

[17] See European Union Agency for Fundamental Rights, *Migrants in an Irregular Situation Employed in Domestic Work: Fundamental Rights Challenges for the European Union and its Member States* (Vienna, 2011).

the number of Americans in need of long-term care is expected to double from 13 to 27 million by 2050.[16] The European Union Agency for Fundamental Rights has observed that, in the European Union, the demand for caring and cleaning work, which has traditionally been performed by women and to some extent by welfare services, is increasing, and that the available country workforces cannot meet this demand alone. In practice, cleaning and caring work is in part carried out by (female) migrants with irregular status.[17]

13. Growing economies that employ more women generate demand for domestic cleaners, housekeepers and childcare, tasks that have traditionally been taken on by women. Income differentials allow families with moderate incomes to pay for domestic help at rates that still attract migrants. The drivers of migration from countries of origin are diverse, including social, financial, environmental and cultural stresses, unemployment, conflict, domestic violence, family concerns, personal ambitions and opportunities that vary from one individual to another, including by gender. In some cases, women migrants find that, in countries of transit and destination, domestic work is the only employment available to them.

A. Framework of international normative standards

14. Under the international human rights framework, all migrants, including migrant domestic workers, are entitled to all fundamental human rights, regardless of their migration status.

15. The fundamental principle of non-discrimination in international human rights law requires that any difference in treatment (between nationals and non-nationals or between different groups of non-nationals) must serve a legitimate objective, and that any course of action that States take to attain such an objective must be proportionate and reasonable.[18]

16. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, in its general comment No. 1 on migrant domestic workers, highlighted the main challenges faced in law and in practice by migrant domestic workers. The Committee noted:

> Generally, migrant domestic workers are at heightened risk of certain forms of exploitation and abuse. At the heart of their vulnerability is isolation and dependence, which can include the following elements: the isolation of life in a foreign land and often in a foreign language, far away from family; lack of basic support systems and unfamiliarity with the culture and national labour and migration laws; and dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants' workplace may also be their only shelter and the reliance of family members back home on remittances sent back from the domestic work. Women migrant domestic workers face additional risks related to their gender, including gender-based violence. These risks and vulnerabilities are further aggravated for migrant domestic workers who are non-documented or in an irregular situation, not

[18] See *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*.

least because they often risk deportation if they contact State authorities to seek protection from an abusive employer.[19]

17. In relation to child migrant domestic workers specifically, article 32 of the Convention on the Rights of the Child (resolution 44/25, annex) affirms the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. This right is reinforced in the Minimum Age Convention, 1973 (No. 138) of ILO and its Worst Forms of Child Labour Convention, 1999 (No. 182). Under this framework, child labour is prohibited if it interferes with the child's right to education, or if the work is likely to harm children's health or development, or if the child is under working age.

18. All relevant ILO Conventions, especially the eight fundamental Conventions,[20] the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) on migrants, address elements of protection granted to migrant workers.

19. The Domestic Workers Convention, 2011 (No. 189) of ILO, which provides specific standards on decent conditions of work for domestic workers, applies to all domestic workers, including migrants (art. 2.1), and has provisions that address the situation of migrant domestic workers. The Convention also: states that migrant domestic workers should receive, before departure, a written contract that they can understand and that is enforceable in the country of employment (art. 8); encourages States parties to collaborate to ensure the effective application of the Convention to migrant domestic workers (art. 8.3); calls on States to regulate recruitment of domestic workers by private employment agencies (art. 15) and to conclude bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in the recruitment, placement and employment of migrant domestic workers; and states that fees charged by private employment agencies should not be deducted from the remuneration of domestic workers (art. 15.1 (e)).

20. Migrant domestic workers are also covered by a number of regional instruments and mechanisms, including the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, the European Social Charter, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights.

B. Human rights challenges and promising practices

21. The nature of domestic work lends itself to certain forms of abuse because it can more easily take place unnoticed, and with impunity, in private households. It is often less regulated, or not regulated at all, and human rights bodies and

[19] CMW/C/GC/1, para. 7.

[20] The eight fundamental ILO Conventions are: the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); the Right to Organize and Collective Bargaining Convention, 1949 (No. 98); the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182); the Equal Remuneration Convention, 1951 (No. 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

employment authorities find it difficult to monitor. In 2013, one study reported that 40 per cent of 73 countries studied worldwide had no form of regulation of any kind for domestic workers,[16] increasing the vulnerability of domestic workers to abuse.

22. In most countries, domestic employment is not subject to effective inspection precisely because the workplace is in a private home. If domestic workers are in an irregular situation, their lives may be even more clandestine because they work both undocumented and behind closed doors. This situation can be exploited by abusive employers, who may impose excessive working hours or inadequate and unfair conditions on their domestic staff and pay low salaries. In addition, live-in migrant domestic workers may be cut off from social networks, in particular if their employer limits their freedom of movement. Migrant domestic workers often do not have access to a system of social protection and are unable to benefit from health insurance, pensions and other benefits.

23. Migrants are likely to be unfamiliar with national laws and the judicial system of their country of employment, and may find it difficult to obtain information about their rights, in particular when they do not speak local languages or are in an irregular situation. Migrants are also more likely than national citizens to work in the informal economy, that is, in domestic work, which may increase their economic insecurity and isolate them from mainstream human rights protection and services. One effect is that migrants are less likely to report abuses to the authorities or to be aware of the services, including health care, social protection and legal aid, that are available to them.

24. The asymmetrical work relationship between employers and migrant workers is even more evident when migrant workers depend on their employers for work permits. In such circumstances, migrants are vulnerable not only because they have an urgent need to work and earn money, but also because they are unable to seek other jobs. Dependence lessens their bargaining power, and, as stated above, their vulnerability is increased by the fact that they may be unable to access essential public services.

1. Violations of dignity, xenophobia and violence

25. Migrant domestic workers are often treated disrespectfully and in ways that violate their dignity. Attitudes towards them may be condescending. They may be insulted, shouted at, beaten, deprived of food or drink, experience other forms of harassment or ill-treatment or psychological and physical abuse that deny them their dignity as human beings.

26. The right to privacy of migrant domestic workers is often violated. Their correspondence is opened, their telephone calls are monitored and their rooms (if, indeed, they have individual rooms) are searched without their consent.[21]

27. One study noted that demeaning or degrading treatment is a particularly insidious form of abuse. Aggressively delivered orders, shouting and constant belittling criticism contain an underlying threat of violence or may be seen as violent. Abuse may also include the withholding of food, not allowing the worker the freedom to prepare her own food and relying on "hand-outs" from the mistress of the house, which may be leftovers from the family meal. In some cases locks

[21] E/CN.4/2004/76, para. 28.

were put on refrigerators and in one case an alarm was installed. Employees may be belittled on a daily basis, including by name-calling, and sometimes names may be changed to suit the employer.[22] Media reports can also reinforce xenophobic attitudes and beliefs, such as newspaper reports that use discriminatory and insulting language about migrant women working as domestic workers.

28. In extreme cases, employers have abused their domestic employees to the point that their punishments or mental coercion amount to degrading or inhuman treatment, or even torture.

29. Undocumented women migrants are also at risk of being physically and sexually abused by officials when they are arrested, detained or deported.

2. Discrimination and gender-based abuses

30. In general, migrant women face many of the same human rights violations as migrant men, with additional risks because of their sex, including physical violence, sexual harassment and abuse. The link between domestic work, migrant women and gender-based violence has been made on several occasions, revealing that women migrant domestic workers are at great risk of exposure to physical and sexual violence.[23]

31. In some countries, pregnancy tests are mandatory before women are permitted to migrate, and pregnant women are considered unfit to work as domestic workers. Pregnancy tests are also sometimes imposed on women domestic workers in the course of their employment, causing women who are pregnant to lose their job, or to seek abortions that are unsafe, in particular in countries that criminalize abortion.

32. Women who experience or make complaints about violence and ill-treatment against them, in particular undocumented migrant women, must often overcome financial and administrative obstacles before they can access support programmes.

33. Migrant women domestic workers may have limited or no access to maternity leave, even unpaid, and may have to continue working until they give birth. During pregnancy or once their children are born, they are at risk of being dismissed and having to leave their employer's house, sometimes with nowhere to go. If they remain in service, they may be expected to work very soon after delivery. They may be asked to entrust their child to someone else or accept deductions from their pay. It can be extremely difficult for women to care for their children while continuing to work, in particular if their duties include complicated hours or night shifts. As migrants, in particular if they are irregular, they may not receive public maternal and child benefits and their children may not be able to use public child-care facilities. They may have to send their children away to live with family members or rely for support on other migrant women.

3. Abusive recruitment and bonded domestic work

34. Many migrant domestic workers are recruited through formal or informal recruitment agencies and brokers. Within these recruitment processes many can be

[22] Ray Jureidini, *Migrant Workers and Xenophobia in the Middle East* (United Nations Research Institute for Social Development, 2003) (available from http://www.unrisd.org/80256B3C005BCCF9/search/045B62F1548C9C15C1256E970031D80D?OpenDocument).

[23] See, for example, A/61/122/Add.1 and A/64/152.

deceived about the nature of the work, working conditions, pay, living conditions, the identity of their employer, the migration status they will have in the country of employment or their ability to end the working relationship and return home.

35. Abusive contracts may not strictly conform to migration rules or may mislead migrants into believing that they are fully compliant legally. Recruitment practices may also obscure the exact status of domestic workers, who may be recruited under a sponsorship programme but end up working temporarily or permanently, and irregularly, for a different employer.

36. Once migrant domestic workers arrive in their place of employment, they may find themselves in a desperate situation, with little option but to accept abusive working and living conditions in order to survive. Such situations are exacerbated when migrants find themselves in debt to the employer or the recruiter. More generally, abusive recruitment practices create, from the outset, unequal working relationships between employee and employer, which deepen a migrant domestic worker's vulnerability and frequently generate additional abuses.

4. Labour exploitation and lack of access to decent work

37. Labour exploitation of migrant domestic workers, in particular those who are in an irregular situation, is widespread. In many cases, workers may: be asked to work excessive hours without rest; not be paid, or have arbitrary sums deducted from their pay; be forced to work in hazardous and dangerous conditions; be refused sick leave or denied compensation following an accident; be dismissed without justification; have their passports confiscated; be prevented from moving about or communicating freely; or be subject to verbal, psychological, physical or sexual abuse. Such circumstances sometimes turn domestic work into a form of slavery.

38. Migrant domestic workers everywhere are commonly expected to work excessive hours. This demand is often aggravated by a refusal to pay for these hours, or to pay at a fair rate. In one study, migrant domestic workers reported working at least 15 hours a day, 7 days a week, amounting to average working weeks of more than 100 hours.[24]

39. Unfair dismissals are also a constant feature. Migrant domestic workers may be dismissed if they ask for paid sick leave, days off or a salary increase.

5. Inability to enjoy the right to health

40. Domestic work may cause specific health problems linked to domestic tasks or overwork. Where working conditions are insecure or oppressive, anxiety, depression and other mental health issues may be an issue. The health of migrant domestic workers may also be undermined if they are malnourished or exposed to unhygienic environments and living conditions.

41. Many migrant workers lack information about the health system in their country of employment and their entitlements with respect to it. Even when they are sick, migrant domestic workers may not receive care because they cannot leave the house or because their employer withholds permission and they may be obliged or

[24] See Amnesty International, "My sleep is my break: exploitation of migrant domestic workers in Qatar", 2014.

compelled to work. Following accidents, they are often denied the right to see a doctor and to receive appropriate medication or medical treatment.

42. Migrant domestic workers who experience physical or sexual abuse at the hands of their employers may be denied adequate care, and they may be denied gynaecological and obstetric care if they become pregnant. In countries where irregular migrants only have access to emergency health services, women migrant domestic workers can be excluded from sexual and reproductive health services.

43. Migrant domestic workers may also have to submit to mandatory testing for conditions such as HIV/AIDS or tuberculosis, although the justification for such screening has been questioned both from a human rights and a public health perspective. As stated above, women migrant workers may face mandatory pregnancy tests followed by deportation if the test is positive.

6. Inadequate housing, food, water and sanitation

44. Live-in migrant domestic workers are often totally dependent on their employer to provide food, water, accommodation and sanitation. Those who are abused are frequently deprived of food and water or forced to live in unsanitary conditions.

45. In its general comment No. 4 on the right to adequate housing, the Committee on Economic, Social and Cultural Rights[25] argued that the right to housing should not be interpreted narrowly in terms of shelter (walls and roof), but understood to imply an entitlement to live in security, peace and dignity, with adequate privacy and adequate space (para. 7). In consequence, situations in which migrant domestic workers are forced to sleep in children's rooms, kitchens or storage rooms are abusive. Migrant domestic workers may not have space to store their personal affairs, access to sanitary equipment or opportunities to be alone. Some women migrant domestic workers are victims of physical or sexual violence because they have to share their room with other employees or cannot lock the door to their room.

46. Live-in domestic workers also face discrimination or abuse with regard to food and water. Some receive insufficient food, or food that is not in accordance with their cultural or religious values. Some women migrant domestic workers have reported that they were expected to eat the leftovers from their employer's meals. Others were not allowed to sit at the table to eat or were forced to eat on the floor. Many live-in domestic workers are not able to buy and cook their own food and therefore cannot choose how or what they eat.

7. Restrictions on freedom of movement and social and physical isolation

47. Far away from home, often without their families and often with a limited knowledge of local languages, migrant workers may suffer from stress and anxiety, which is reinforced by the challenges associated with integrating into a new society. For migrant domestic workers, networks, including informal networks based on faith or nationality, are a vital source of solidarity and information on employment, health, housing, justice and social services. In cases of grave abuse, social networks can help a migrant domestic worker to escape from her situation, and can provide

[25] Available from www.refworld.org/docid/47a7079a1.htm.

assistance afterwards. For migrant domestic workers who have little time to rest and relax, they provide vital support and friendships.

48. Employers frequently confiscate the identification papers of migrant domestic workers upon arrival, which places them in a situation of complete dependence and hampers their movement, including possible return to their country of origin without their employer's consent. Some employers also restrict their freedom of movement, refusing permission to leave the house or locking them in. Their phone calls may be monitored or they may not be allowed to own mobile phones at all.

49. One study noted of such restrictive practices:

> Employers, agents, and even Governments often defend these practices as necessary to protect the employer's household, the privacy of the family, and the personal security of the domestic worker, and to prevent workers from running away. Arbitrary denial of freedom of movement and association is abusive in its own right, and ... dramatically increases the vulnerability of domestic workers to economic exploitation, forced labour, intimidation, and sexual violence and harassment.[26]

III. Human rights-based approach to the governance of migrant domestic work

50. To ensure that all migrant domestic workers are able to live and work in safety and dignity, it is important that States implement a human rights-based regulatory framework on migration and domestic work. Human rights standards, as reflected in the core international human rights instruments, as well as principles such as participation, empowerment and accountability, should guide all stages of policymaking on migration and domestic work. The concluding section of the present report sets out some key elements of a human rights-based approach to the protection and promotion of the human rights of migrant domestic workers and provides examples of recent practices in this regard.

1. Legislative framework

51. The first step for such a human rights-based approach will often be to ensure that an adequate legislative framework is in place to provide for the protection of the human rights of migrant domestic workers.

52. According to the contribution of the Economic Commission for Africa, legislation introduced in South Africa in 2002 set out, for the first time, comprehensive standards and protections for domestic workers, including migrant domestic workers, including a minimum wage, hours of work, overtime pay, salary increases and leave entitlements. Furthermore, a labour court decision recognized that migrant domestic workers who lack a valid work permit in South Africa were fully protected by the Labour Rights Act and the Basic Conditions of Employment Act.

53. In Argentina, the Private Household Workers Contract of Employment Act has expanded the rights of workers in this sector, providing them with the same rights as

[26] See Human Rights Watch, "Swept under the rug: abuses against domestic workers around the world", 2006.

other workers, including: an 8-hour work day; weekly rest; paid annual vacation; insurance in case of occupational injuries or accidents; paid overtime; leave entitlements for marriage, the death of their spouse or family members and for maternity; and severance pay.

54. In 2006, Uruguay also recognized that domestic workers should have equal right to labour protection and social security rights, including a limit to working hours, weekly and nightly rest, minimum wages and the right to insurance benefits for unemployment and health coverage. In Uruguay, migrant domestic workers have the same rights as national domestic workers.

55. Under the Constitution of Italy, the right to health and to the highest standard of physical and mental health is guaranteed to all migrants present in the territory, including free medical care to all (art. 32) and a minimum standard of living for those who are in need (art. 38). The law forbids health-care and administrative personnel to report irregular migrants who seek to use health-care facilities to law enforcement authorities.

2. Participation

56. For isolated migrants, the ability to find support and assistance is important. The role of civil society in providing support and services such as health care and legal aid to migrant domestic workers is often crucial. Trade unions can represent migrant domestic workers in mediation procedures or labour courts and can provide support and advice if their rights are violated. The Senegalese and Mauritanian confederations of trade unions (Confédération Nationale des Travailleurs du Sénégal and Confédération Générale des Travailleurs de Mauritanie) have signed a mutual cooperation agreement to ensure that violations of migrant domestic workers' rights are followed up and supported.[27]

57. The domestic worker collective bargaining agreement in Uruguay was reached through a tripartite structure, bringing together the domestic workers union, the Uruguayan league of homeworkers and consumers, to represent employers of domestic workers in wage negotiations with the ministries of employment and social security. Among other things, the first agreement, in August 2008, provided for minimum wages and increases, severance pay, overtime and early termination payments and a ban on sexual harassment. The second agreement, in 2010, renewed the provisions of the 2008 agreement and increased the minimum wage. Both agreements were extended to the entire domestic work sector in Uruguay, including migrant workers.

58. In addition, inclusive social dialogue and tripartite consultations have been initiated, including with domestic worker organizations at all stages of the policy process. In Lebanon, a national steering committee on women migrant domestic workers comprising representatives of the Government, civil society and international organizations was established in 2006 and mandated to make proposals to better protect women migrant domestic workers.

[27] See ILO, "Protecting the rights of migrant domestic workers", 2013.

3. Partnerships

59. Human rights-based partnerships between and within States are an important way to ensure the protection and promotion of the human rights of migrant domestic workers. To uphold human rights principles, bilateral and multilateral agreements on migration for domestic work should be negotiated, devised and implemented in full accordance with human rights standards.

60. Kenya has set up a high-level ministerial group, led by the President, which has developed an action plan and guidelines on labour migration. New legislation on private recruitment agencies has also been developed to improve the enforcement of regulations regarding recruitment agencies. The country is currently involved in a bilateral dialogue with some countries of destination, with a view to protecting its nationals who migrate for domestic work.

61. The Ministry of Labour in Lebanon is currently negotiating with the embassies of Ethiopia, the Philippines and Sri Lanka, among others, to conclude an agreement on the protection of domestic workers' rights.

62. In Switzerland, the "whole of Government" approach to migration is based on an interdepartmental cooperation structure that brings together the various actors of the federal Government involved in migration to enable policy coherence on migration issues.

4. Accountability

63. Domestic work is often not monitored by competent bodies, and migrant domestic workers find it difficult to bring complaints and access legal remedies when their rights are violated. This can be due to various, often overlapping reasons, including unfamiliarity with national laws and judicial systems, unfamiliarity with local languages, inappropriate or inadequate legal assistance, lack of workplace inspections and restrictions on freedom of movement and expression.

64. It is an obligation of countries of origin to protect migrant domestic workers who are their nationals. The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families has repeatedly reminded countries of origin that it is their duty to protect their nationals abroad, notably by providing effective consular services and mechanisms for receiving complaints from migrant workers.

65. As labour inspectors are unable to enter private homes in Lebanon, social workers have been appointed to monitor the conditions of domestic workers. Labour inspectors have been given specialized training courses to assist them in monitoring the implementation of laws and regulations concerning decent work, including for domestic workers.

66. In Peru, under the Ministry of Labour and Employment, labour inspectors are mandated to investigate domestic workplaces. Inspectors carried out 152 inspections with regard to domestic workers from April to December 2014.

67. In Ireland, the Domestic Workers Action Group, a non-governmental organization, collaborated with the trade union movement in 2010 to introduce labour inspections in private homes. Since that time, every employer obtaining an employment permit from the domestic work section is obliged to sign an authorization document that allows labour inspections in their premises.

68. In Malta, the Department for Industrial and Employment Relations receives complaints from migrant domestic workers with regard to non-payment of wages or other workplace violations. The Department is empowered to investigate such complaints and, if necessary, to initiate criminal proceedings against the employer.

69. In Qatar, the Ministry of Labour and Social Affairs monitors the work of the agencies that recruit domestic workers. It checks them regularly and carries out random inspections to ensure respect for the rights of domestic workers and the absence of exploitation. In 2012, 13 such recruitment agencies were shut down for non-compliance with the regulations of the ministry.

70. The Ministry of Labour in Argentina operates a tripartite commission for equal opportunities between men and women in the workplace to deal with complaints regarding the violations of labour rights, with special emphasis on those that affect women, in particular women migrants. Awareness seminars and workshops on the subject have also been developed with the participation of different social actors and migrant communities.

71. In Lebanon, the Ministry of Labour has set up a hotline to receive complaints directly from migrant domestic workers.

72. In Spain, women migrants in undocumented situations who are victims of physical violence have access to emergency accommodation and police protection as soon as they lodge a complaint. For instance, the Madrid city council operates a care service for domestic violence, a specialized intervention model for survivors of gender-based violence, which operates within municipal social services and which is open 24 hours a day, 365 days a year. With a free phone service, the care service provides immediate assistance, legal information and support, psychological help and emergency short-stay accommodation. The service, which is staffed by a multidisciplinary team of police and gender-based violence specialists, coordinates with municipal and privately run support services in the city.

73. Since 2013, the United Nations Office on Drugs and Crime has supported a series of national training workshops for diplomatic and consular personnel of the Governments of Indonesia and the Philippines in order to facilitate the identification of potential victims of trafficking in persons among Filipino and Indonesian migrant domestic workers who wish to seek consular assistance in relation to exploitative working conditions.

5. Improving the evidence base

74. It is necessary to generate appropriate knowledge about domestic work and domestic workers in countries of origin and destination and to assist States and other stakeholders in developing and implementing human rights-based policies, programmes and other measures related to migrant domestic workers. In addition, lack of appropriate data and data-capturing capacity makes it difficult to determine the number of workers in the sector and under which labour regimes they fall.

75. In Nepal, local research institutions, in partnership with international organizations, undertook a situational and policy analysis of Nepali women migrant workers, including domestic workers. The evidence generated by that initiative contributed to the decision to lift the ban on Nepali women migrant workers, including domestic workers, migrating to the countries of the Gulf and also

contributed to the adoption by the Government of Nepal of the Foreign Employment Act (2007), which includes gender-sensitive provisions.

76. In 2013 a study commissioned by the International Organization for Migration, under the United Nations Joint Programme to Address Violence Against Women, interviewed 101 women migrants who returned to Bangladesh between March and May 2013 in order to improve its response to the issue of violence against women migrant workers.

77. The national equality body of Italy publishes an annual migration report tracking the situation of migrants in Italy through statistical data on residence, inclusion in the labour market and society and non-discrimination.

78. In Peru, since 2005, the national institute of statistics and the national office of migration, in collaboration with other ministries, including the Ministry of Foreign Affairs, have published an annual statistical compendium on statistics for the international migration of Peruvians and the immigration of foreigners, including the national census, household surveys and administrative records as sources of information.

IV. Recommendations

79. **The Secretary-General welcomes the information received from Member States, including information concerning legislation, regulations and policies to strengthen the protection of the human rights of migrant domestic workers, and, in that regard:**

(a) **Underlines that States have an obligation under the core international human rights instruments to protect the human rights of all individuals under their jurisdiction, regardless of their nationality or legal status;**

(b) **Encourages States to ratify all relevant international human rights instruments and international labour rights instruments, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as the Domestic Workers Convention, 2011 (No. 189) of ILO;**

(c) **Encourages States to ensure that all migrant domestic workers are able to enjoy their right to decent work and to just and favourable conditions of work without any derogation, even in private contracts;**

(d) **Calls upon States to combat and sanction xenophobia, racism and discrimination against migrant domestic workers, including on the basis of gender;**

(e) **Encourages States to ensure that all migrant domestic workers have access to remedies, including in cases of violence and/or physical, mental or sexual abuse by employers, failure to pay wages and unlawful dismissal, and to ensure that employers are not able to abuse the rights of migrant domestic workers with impunity;**

(f) **Calls upon States to take proactive positive measures to avoid the marginalization and social exclusion of migrant domestic workers: migrants**

should be empowered to exercise their right to freedom of association, including through forming or joining trade unions as well as informal networks and associations;

(g) Encourages States to ensure that all migrant domestic workers, regardless of their legal status, have access to adequate health care and to protect their access to the underlying determinants of health;

(h) Calls upon States to ensure that all migrant domestic workers are able to enjoy their rights to adequate housing and to live in security, peace and dignity, and, at a minimum, to ensure that migrant domestic workers are not forced to live in housing conditions that are inhuman or degrading and contrary to human dignity;

(i) Recommends the urgent development of relevant, valid and reliable information on migration for domestic work from a human rights perspective, including through the collection of data disaggregated on the basis of sex, age and legal status, while ensuring that such data-collection activities are in accordance with international standards on data protection and the right to privacy;

(j) Encourages States to include information in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to protect the human rights of migrant domestic workers.

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Item 73 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, submitted in accordance with Human Rights Council resolution 26/8.

* A/70/150.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

The due diligence principle is a well-established component of a State's obligations to address acts by private actors by preventing and protecting victims against such abuses, punishing the perpetrators, and ensuring remedies for victims. As it is non-State actors who most often perpetrate trafficking, the application of States' due diligence obligations concerning non-State actors is particularly critical to ensure the rights of trafficked persons. The failure to exercise due diligence is consequential, meaning that States that have failed to exercise due diligence towards private actors incur international responsibility that then requires them to provide an effective remedy for victims. Previous reports of the mandate holder on trafficking in persons, especially women and children, have identified elements of States' due diligence obligations, including in the identification of trafficked persons, the prevention of trafficking, and the provision of remedies. Due diligence obligations have also been identified in a number of areas that are of direct relevance — and in some cases directly apply — to trafficking, including violence against women, migrant workers, and sex-based discrimination.

Building on these explanations of the nature and scope of due diligence obligations, the present report addresses a series of legal and operational questions about what due diligence on trafficking in persons requires of States with respect to non-State actors. In addition to examining the obligations of States as duty-bearers, it also includes good practices and recommendations on the role of non-State actors themselves in the due diligence framework. Specifically, the report identifies core components of due diligence with regard to six areas: the prevention of trafficking in persons; the obligations to identify, assist and support victims; criminalization, investigation, prosecution and punishment; remedies; inter-State cooperation and institutions; and due diligence of non-State actors such as business enterprises.

In each of these areas several cross-cutting issues of particular importance to combating trafficking in persons are discussed, including extraterritoriality, resources, the need for greater emphasis on and a wider understanding of the preventive arm of due diligence, and due diligence in crisis contexts. The report also provides a number of concrete examples of good practices in due diligence, while at the same time emphasizing that due diligence is neither a one-size-fits-all standard nor a box-ticking exercise. Rather, meaningful and substantive human rights due diligence provides a necessary framework to ensure policy coherence between anti-trafficking policy and related policy areas such as immigration and labour-market policies and is core to ensuring a human rights-based approach to trafficking in persons.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 26/8, paragraph 2 (k). It outlines the activities of the Special Rapporteur on trafficking in persons. The thematic focus of the report is due diligence and trafficking in persons.

II. Activities carried out by the Special Rapporteur

A. Participation in conferences and consultations[1]

2. On 13 and 14 April 2015, the Special Rapporteur took part in four events at the thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Doha. On 13 April, she delivered opening remarks at the ancillary meeting on preventing labour trafficking and exploitation of migrant workers", organized by the European Institute for Crime Prevention and Control, affiliated with the United Nations. On 14 April, she delivered a keynote address during a high-level event on the United Nations Trust Fund for Victims of Trafficking in Persons. She was also a panellist in the ancillary meeting on United Nations Office on Drugs and Crime Issue Papers exploring the concepts of "abuse of a position of vulnerability", "consent" and "exploitation" within the definition of trafficking in persons. Moreover, she took part in a workshop entitled "Trafficking in persons and smuggling of migrants: successes and challenges in criminalization, mutual legal assistance and in the effective protection of witnesses and trafficking vic ims". She had several bilateral meetings, including with the United Kingdom Independent Anti-Slavery Commissioner and the Prime Minister of Qatar, based in Geneva.

3. On 18 and 19 May 2015, she convened an Expert Group Meeting on due diligence in Geneva that fed into the present report.

4. On 16 June 2015, the Special Rapporteur presented her first report at the twenty-ninth session of the Human Rights Council, outlining her vision for the mandate and the thematic priorities she intends to focus on, including the link between trafficking, migration and conflicts and the prevention of trafficking, with a particular focus on trafficking for labour exploitation. She also took part in a number of side-events.

5. The mandate holder also participated in a number of conferences and meetings over the past year, at the invitation of State and non-State actors.

B. Country visits

6. The Special Rapporteur visited Malaysia from 23 to 28 February 2015, at the invitation of the Government (see A/HRC/29/38/Add.1). She wishes to express her thanks to the Government for its cooperation prior to and during the visit.

7. The due diligence principle is a well-established component of a State's obligations under general international law and specific human rights covenants to address acts by private actors by preventing and protecting victims against such

[1] For activities between October 2014 and March 2015, see A/HRC/29/38, paras. 2-5.

abuses, punishing the perpetrators and ensuring remedies for victims. As it is non-State actors who most often perpetrate trafficking, the application of States' due diligence obligations concerning non-State actors is particularly critical to ensure the rights of trafficked persons.[2] As a human rights obligation, States' due diligence obligations apply without discrimination to all individuals within its territory or effective control, including citizens and non-citizens,[3] individuals trafficked for sex, labour, organ removal, and other forms of trafficking, and regardless of whether the State is one of origin, transit and/or destination. The failure to exercise due diligence is consequential, meaning that States that have failed to exercise due diligence towards private actors incur international responsibility that then requires them to provide an effective remedy for victims of trafficking in persons.[4]

8. The exercise of due diligence in anti-trafficking is critical to achieving a comprehensive and integrated approach to ensuring the human rights of trafficked persons and persons at risk of being trafficked. Accordingly, previous reports of the mandate holder on trafficking in persons, especially women and children, have identified elements of States' due diligence obligations, including in the identification of trafficked persons,[5] the prevention of trafficking,[6] and the provision of remedies.[7]

9. Despite regulations set out in international instruments and decades of anti-trafficking initiatives, significant protection gaps persist in practice for victims of trafficking in persons.[8] As such, there is further and much-needed scope to detail the extent and content of due diligence on trafficking in order to better equip States to meet their obligation under international human rights law to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, to assist and protect victims of trafficking in persons, and to provide access to remedies. Meaningful and substantive human rights due diligence provides a necessary framework to enable all stakeholders to re-examine both the trafficking and anti-trafficking landscape, to revise — where necessary — anti-trafficking legislation and policies, and to ensure policy coherence between anti-trafficking policy and related policy areas such as immigration and labour-market policies.

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[2] See A/67/261, para. 7. While the principle of due diligence has been referenced in relation to harms committed by State or non-State actors (see e.g., Jessica Lenahan (Gonzales) v. United States, Case 12.626, Inter-American Commission on Human Rights, Report No. 80/11, para. 122). The present report focuses on human rights due diligence standards vis-à-vis private actors.

[3] See Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13, para. 10); Committee on the Elimination of Discrimination against Women, General Recommendation No. 28 on the Core Obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/GC/28, para. 12); ibid., General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW/C/GC/30, para. 2).

[4] See, e.g., Human Rights Council, General Comment No. 31, para. 8; Committee against Torture, General Comment No. 2, Implementation of article 2 by States Parties (CAT/C/GC/2), para. 18; Committee against Torture, General Comment No. 3, Implementation of article 14 by States parties (CAT/C/GC/3), para. 7; A/HRC/26/18, annex, para. 2.

[5] A/HRC/17/35/Add.6, para. 65. See also Zhen Zhen Zheng v. Netherlands, CEDAW/C/42/D/15/2007, paras. 8.1-9.1.

[6] A/HRC/26/37, para. 55; A/HRC/23/48, paras. 62, 84.

[7] A/66/283, paras. 12, 31; A/HRC/17/35; A/HRC/26/18, annex, para. 2.

[8] See, e.g., A/HRC/26/37/Add.2.

10. Accordingly, this report addresses a series of legal and operational questions about what due diligence on trafficking in persons requires of States. In addition to examining the obligations of States as duty-bearers, it also includes good practices and recommendations on the role of non-State actors themselves in the due diligence framework. It is not, however, the goal of the present report to develop a list of measures that comprise due diligence or to summarize all the existing guidance on good practices in the anti-trafficking context concerning private actors. Due diligence is neither a one-size-fits-all standard nor a box-ticking exercise, but is instead core to ensuring a comprehensive human-rights-based approach to addressing trafficking in persons by States and non-State actors. Instead, the present report identifies key cross-cutting considerations and particularly pressing human rights issues in addressing all areas of anti-trafficking practices, including the "5Ps" (Protection, Prosecution, Punishment, Prevention, Promoting international cooperation and partnership including public and private partnership), the "3Rs" (Redress, Recovery (Rehabilitation) and Reintegration), and the "3Cs" (Capacity, Cooperation and Coordination) as developed previously by the mandate holder.[9]

III. Due diligence and trafficking in persons: scope and application

A. Due diligence under international human rights law: general points

11. Under international human rights law, States have an obligation to protect against human rights abuse by private actors.[10] This is understood as a positive obligation requiring States to take a range of measures to ensure that third parties do not interfere with human rights guarantees.[11] The content of the human rights due

[9] See, e.g., footnote 8.

[10] See, e.g., *Velásquez-Rodríguez v. Honduras*, Merits, Judgment, Inter-American Court of Human Rights (ser. C) No. 4, para. 172 (identifying the due diligence principle as follows: "[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [American] Convention [on Human Rights]."). See also Human Rights Council, General Comment No. 31, para. 8; Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, para. 9; CEDAW General Recommendation No. 28, para. 13; CEDAW General Recommendation No. 30, para. 15; Committee against Torture, General Comment No. 3, para. 7; Committee against Torture, General Comment No. 2, para. 18; Committee on Economic, Social and Cultural Rights, General Comment No. 12, Right to adequate food (E/C.12/1999/5, para. 15); Committee on the Rights of the Child, General Comment No. 13, The right of the child to freedom from all forms of violence, CRC/C/GC/13, para. 5.

[11] Ibid. and infra notes 12 and 13.

diligence principle has been affirmed and articulated by regional[12] and international human rights bodies.[13]

B. Due diligence under international human rights law: trafficking in persons and related areas (e.g., violence against women)

12. In addition to these general statements concerning due diligence, due diligence obligations on trafficking in persons specifically have also been identified. For example, in addition to the prior reports of this mandate holder and of other special procedures,[14] Principle 2 of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking also provides that "States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons."[15] In the European human rights system, the standard of "positive obligations" has been specifically applied to measure when a State can be held responsible for private acts of human trafficking in the case of *Rantsev v. Cyprus and Russia* (2010).[16]

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[12] In addition to *Velásquez-Rodríguez v. Honduras*, Inter-American Court of Human Rights and Inter-American Commission on Human Rights opinions/decisions that address the due diligence principle include, e.g., *Maria da Penha Maia Fernandes v. Brazil*, Case 12.051, Inter-American Commission on Human Rights, Report No. 54/01, Organization of American States/Ser. L/V/II.111, doc. 20 rev. (2000); *González et al. v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-American Court of Human Rights (ser. C) No. 205 (Nov. 16, 2009); *Jessica Lenahan (Gonzales) v. United States* (2011). For example, in the European system, this is through the concept of positive obligations as articulated in a series of cases, including *X and Y v. the Netherlands*, 91 European Court of Human Rights (ser. A) 27 (1985); Osman v. United Kingdom, App. No. 23452/84, European Court of Human Rights (1998); Akkoc v. Turkey, App. No. 22947/93, 22948/93, European Court of Human Rights (2000); *Z and Others v. United Kingdom*, App. No. 29892/95, European Court of Human Rights (2001); *E and Others v. United Kingdom*, App. No. 33218/96, European Court of Human Rights (2002); *M. C. v. Bulgaria*, App. No. 39272/98, European Court of Human Rights (2003); *Opuz v. Turkey*, App. No. 33401/02 European Court of Human Rights (2009); *Rantsev v. Cyprus and Russia*, App. No. 25965/04, European Court of Human Rights (2010). See also in the African regional human rights system, African Commission on Human and Peoples' Rights, 245/02, Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006); African Commission on Human and Peoples' Rights, application 55/96, SERAC and CESR v. Nigeria, 15th Annual Activity Report of the African Commission on Human and Peoples' Rights (2002), para. 46; African Commission on Human and Peoples' Rights, application 74/92, Commission Nationale des Droits de l'Homme et des Libertés v. Chad, 9th Annual Activity Report of the African Commission on Human and Peoples' Rights (1995-96), 4 IHRR 94 (1997).

[13] International bodies and instruments have also affirmed and explained the duty in general terms. In addition to sources cited supra in note 10, see, e.g., art. 4 (c) of the Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 (1993) and para. 124 (b) of the Beijing Declaration and Platform for Action adopted by the Beijing Fourth World Conference on Women, which both reaffirmed this principle (*Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995*, annexed to A/CONF.177/20/Rev.1 (1995)).

[14] See, e.g., E/CN.4/2000/68.

[15] See Office of the United Nations High Commissioner for Human Rights (OHCHR), Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1) Principle 2. Note also OHCHR Recommended Principles, Principle 6 ("States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking").

[16] *Rantsev v. Cyprus and Russia*, App. No. 25965/04, European Court of Human Rights (2010).

13. Additionally, due diligence obligations have been identified in a number of areas that are of direct relevance — and in some cases directly apply — to trafficking, including violence against women,[17] migrant workers,[18] and sex-based discrimination.[19] In addition to due diligence requirements in international human rights law, due diligence standards in areas such as "environmental protection, consumer protection and anti-corruption,"[20] are also relevant to addressing trafficking in persons.

C. Application of due diligence and trafficking in persons

14. Alongside human rights due diligence standards on trafficking involving private actors, other areas of international law also contain obligations that specifically address trafficking by non-State actors. In particular, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations Trafficking Protocol) as a Protocol to the United Nations Convention against Transnational Organized Crime requires States to undertake to prevent trafficking, protect victims, and prosecute trafficking in persons by private individuals, including by providing the possibility for victims to access compensation.[21] In considering whether a State has acted diligently, it will be relevant to consider whether it is bound by any of these other international obligations on trafficking by non-State actors, such as through the United Nations Trafficking Protocol or regional instruments.[22] A better understanding of the content of the human rights obligations of due diligence on trafficking can also help ensure that States comply with human rights in implementing these other anti-trafficking obligations and to develop complementary protections for trafficked persons.

15. The due diligence obligation to protect individuals from traffickers also often intersects and overlaps with other areas of State obligations (e.g., in relation to

[17] See, e.g., Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against women (A/47/38 at page 1, para. 9), reprinted in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies (HRI/GEN/1/Rev.6 at 243 (2003); *Şahide Goekce (deceased) v. Austria* (CEDAW/C/39/D/5/2005; *Fatma Yildirim (deceased) v. Austria* (CEDAW/C/39/D/6/2005). See also Hearing Submission: *Jessica Lenahan (Gonzales) v. United States*, presented by the United Nations Special Rapporteur on violence against women, its causes and consequences to the Inter-American Commission on Human Rights; A/HRC/23/49; E/CN.4/2006/61; E/CN.4/2000/68; E/CN.4/1996/53. See further Zarizana Abdul Aziz and Janine Moussa Due Diligence Project, Co-Directors, "Due Diligence Framework State Accountability Framework for Eliminating Violence against Women" (2014), available at http://www.duediligenceproject.org/Home.html.

[18] See, e.g., Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, Inter-American Court of Human Rights (ser. A) No. 18 (Sept. 17, 2003).

[19] See, e.g., Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, para. 13.

[20] See, e.g., Olivier De Schutter, et al., *Human Rights Due Diligence: The Role of States* 4 (2012), available at http://accountabilityroundtable.org/wp-content/uploads/2012/12/Human-Rights-Due-Diligence-The-Role-of-States.pdf.

[21] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000) (United Nations Trafficking Protocol), art. 6(6); United Nations Convention against Transnational Organized Crime (Organized Crime Convention), art. 25(2).

[22] See, e.g., *Rantsev v. Cyprus and Russia* (2010).

activities of public institutions). For example, State failures to respect and fulfil human rights in non-discrimination, labour, migration, and education create the conditions conducive to trafficking by third parties.[23] By requiring a human rights-based approach, due diligence enables States to apply all their international obligations in ways that encourage less compartmentalization and more holistic approaches to trafficking to ensure the realization of human rights.[24]

16. The territorial and extraterritorial application of human rights[25] means that States' due diligence obligations apply extraterritorially to those within their jurisdiction, including domestic non-State actors (e.g., corporations).[26] These obligations apply when States exercise "effective control" either when acting individually (e.g., in unilateral military action) or as members of international or intergovernmental organizations and coalitions (e.g., in peacekeeping forces).[27] Due diligence human rights obligations also apply in peacetime, conflict, and post-conflict situations.[28] In practice, however, States, inter-State, and non-governmental actors often overlook trafficking in crisis situations (e.g., armed conflicts, natural disasters and protracted crises), creating significant protection gaps that leave "forms of trafficking unaddressed and victims unassisted."[29] While State actors have due diligence obligations in crisis contexts, under certain circumstances, non-State actors (e.g., armed groups) will themselves be required to address international human rights, including the obligations of due diligence.[30] For example, while non-State actors such as armed groups cannot ratify international human rights treaties, "under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights."[31]

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[23] A/HRC/23/48, para. 62.

[24] A/HRC/23/49, para. 18.

[25] See, e.g., Human Rights Council, General Comment No. 31, para. 10; Committee against Torture, General Comment No. 2, paras. 7, 16; Committee on the Elimination of Discrimination against Women, General Recommendation No. 28, para. 12; Committee on the Elimination of Discrimination against Women, General Recommendation No. 30, paras. 8-10, 15; Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005, p. 168, paras. 216-217.

[26] See, e.g., Committee on the Elimination of Discrimination against Women, General Recommendation No. 30, paras. 8-12.

[27] See e.g., supra note 25.

[28] See, e.g., Committee on the Elimination of Discrimination against Women, General Recommendation No. 30, para. 9 ("In conflict and post-conflict situations, States parties are bound to apply the Convention and other international human rights and humanitarian law"; Human Rights Council, General Comment No. 31, para. 11 ("the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.").

[29] International Organization for Migration, *Addressing Human Trafficking and Exploitation in Times of Crisis — Evidence and recommendations for further action to protect vulnerable and mobile populations* 7 (2015), available at https://www.iom.int/sites/default/files/press_release/file/CT_in_Crisis_FINAL.pdf.

[30] See Committee on the Elimination of Discrimination against Women, General Recommendation No. 30, para. 16.

[31] Ibid.

D. Due diligence as an obligation of conduct

17. Due diligence is too often limited in practice because it is seen as requiring resources and State capacity to control private actors. This can give rise to questions about the role of due diligence in contexts where capacities of States are diminished (e.g., in conflict or crisis) or where States' capacities to protect human rights from acts of third parties have not kept pace with the rise of powerful private actors, such as corporations and other non-State actors such as armed groups. Because due diligence is an obligation of conduct,[32] it does not insist on a one-size-fits-all approach that requires uniform outcomes from differently situated States. As an obligation of conduct, however, due diligence does require "States to take reasonable measures that have a real prospect of altering the outcome or mitigating the harm."[33] States are also required to undertake substantive review and assessment policies to test results and effectiveness, including whether they are taking appropriate measures to ensure the human rights of trafficked persons. This requirement of due diligence assessment is particularly important when potential infringements come from failures of the State to act with regard to non-State actors as omissions can be particularly difficult to measure.[34]

18. The requirement that due diligence be exercised in good faith[35] — meaning the taking of "positive steps and measures by States"[36] — also means that a lack of resources or capacity cannot completely shield States from their due diligence obligations. Indeed, often, it is not more resources but rather their reallocation — including towards preventative policies — that is needed for States to act diligently as assessed under the particular circumstances. For many States' anti-trafficking policies, the "form in which due diligence has thus far been pursued is not without alternatives;"[37] due diligence requires pursuing these alternatives to maximize efforts to ensure the human rights of trafficked persons in all aspects of anti-trafficking responses. While in practice some of these efforts to ensure the human rights of trafficked persons may be implemented by non-State actors (e.g., through civil society-run assistance programmes), States cannot delegate their due diligence obligations.[38]

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[32] A/HRC/23/49, para. 16 ("The general opinion is that it is one of conduct, however, failure of conduct will likely constitute failure of result.").

[33] Ibid., para. 72.

[34] Ibid., para. 13.

[35] See, e.g., E/CN.4/2006/61, para. 36 ("Due diligence obligation must be implemented in good faith ...This will necessarily entail taking positive steps and measures by States"); E/CN.4/2000/68, para. 53.

[36] E/CN.4/2006/61, para. 36.

[37] Aoife O'Donoghue, "The exercise of governance authority by international organisations: The role of due diligence obligations after conflict", in Matthew Saul, James A. Sweeney (eds.), *International Law and Post-Conflict Reconstruction Policy* 50 (2015).

[38] E/CN.4/2006/61, para. 34.

IV. Due diligence and trafficking in persons: operationalizing core elements

A. Due diligence and the prevention of trafficking in persons

19. In practice, due diligence has been applied mainly as a reactive obligation, often leading States to focus on post-hoc anti-trafficking measures, such as investigation and prosecution of trafficking. Instead, properly constituted, the due diligence standard enables States to take a proactive and long-term approach that focuses, for example, more closely on the prevention arm of due diligence. It also requires States to take a holistic approach that evaluates how due diligence in each of the different areas of anti-trafficking — such as prevention, prosecution, and punishment — interact with each other. For example, providing adequate protection and assistance to victims of trafficking in persons after they have been identified is also often necessary to prevent instances of retrafficking. Due diligence should be taken into account before, during and after each anti-trafficking intervention by not only considering each individual measure on its own terms, but also how it intersects with other anti-trafficking efforts.

20. Due diligence on preventing trafficking also requires action to address the wider, more systemic processes or root causes[39] that contribute to trafficking in persons, such as inequality, restrictive immigration policies, and unfair labour conditions, particularly for migrant workers.[40] As such, the present mandate holder has previously emphasized that international law "requires that States act with due diligence to prevent trafficking and the human rights violations with which it is associated,"[41] including to address demand,[42] such that due diligence "on the part of States should require action on these wider processes, all of which foster demand for, and vulnerability to, trafficking."[43] Additionally, *Rantsev v. Cyprus and Russia*, has clarified that as part of the positive obligation to address trafficking "a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking."[44] Often, however, States adopt immigration policies in the name of preventing trafficking that in practice deter movement; instead of being preventative, these policies make transborder movement more perilous and foster situations that lead to trafficking.

21. To counter these and other effects, due diligence requires that in developing, implementing and assessing prevention approaches, initiatives be based on "accurate empirical data"[45] and targeted to those most at risk of trafficking in persons.[46] For example, mass migration crises result in the concentration of a large number of displaced vulnerable populations in few places, making them a prime

[39] See, e.g., A/HRC/23/49, para. 70 ("There is a need to create a framework for discussing the responsibility of States to act with due diligence, by separating the due diligence standard into two categories: individual due diligence and systemic due diligence.").
[40] See generally A/HRC/23/48, para. 84.
[41] A/HRC/26/37, para. 55.
[42] A/HRC/23/48, para. 84.
[43] Ibid., para. 62.
[44] See, e.g., *Rantsev v. Cyprus and Russia* (2010), para. 284.
[45] E/CN.4/2006/61, para. 37.
[46] See, e.g., *Jessica Lenahan (Gonzales) v. United States* (2011), para. 127; A/HRC/14/L.9/Rev.1, para. 11.

target for traffickers. Prevention policies should mitigate these risks, including through providing comprehensive and innovative regulated mobility avenues in order to prevent recourse of migrants to smugglers in the first place.[47] Additionally, in crisis situations such as armed conflicts, natural disasters and protracted crises, it is vulnerable and mobile populations such as "irregular migrants, migrant workers, asylum seekers and displaced populations (refugees and internally displace) persons) caught up in a crisis, or in transit, people left behind and local communities"[48] that are most at risk of trafficking in persons. Good State practices to address these risks before crisis can include, for example, ensuring livelihood activities to reduce the vulnerabilities to trafficking in persons and exploitation for at-risk populations.[49]

22. Good practices in prevention should also address all types of trafficking. For example, good practices to combat trafficking in persons for the purpose of domestic servitude in diplomatic households include that undertaken in Austria, where authorities request that foreigners who seek to work for a diplomatic household have a written contract that complies with Austrian labour law. Workers must also apply in person for a diplomatic legitimation card, giving Austrian authorities, "an opportunity to interview the applicants, examine their work contracts, and inform them of their rights and obligations while in Austria and of the contact details of NGOs which could be of assistance."[50] Good practices to prevent labour trafficking include States regulating the supply of workers to sectors by controlling the licensing of employment agencies working in these fields. For example, in the United Kingdom, the Gangmasters Licensing Authority regulates the supply of workers in certain labour-intensive industries (e.g., agriculture, horticulture, forestry, fishing, food processing).[51]

23. In understanding the due diligence obligation to prevent trafficking in persons, there are also useful interactions with human rights due diligence standards in other contexts. For example, the Inter-American Court of Human Rights in the Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion (2003) clarifies States' due diligence obligations concerning migrant workers, noting that migratory status can never be a justification for depriving individuals of the enjoyment and exercise of human rights, including those related to employment[52] and that the duty of due diligence requires States to "not allow private employers to violate the rights of workers, or the contractual relationship to violate minimum

[47] Saving migrant lives is imperative but what next? — United Nations human rights experts ask European Union leaders (Apr. 24, 2015), available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15889&LangID=E#sthash.vEoTvteS.wzYOtDxm.dpuf.

[48] IOM, *Addressing Human Trafficking and Exploitation in times of Crisis — Evidence and recommendations for further action to protect vulnerable and mobile populations* 7 (2015).

[49] Ibid. at p. 10.

[50] Group of Experts on Action against Trafficking in Human Beings (GRETA), "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria", para. 73 (2011), available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_10_FGR_AUT_en.pdf.

[51] GRETA, "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom", para. 100 (2012), available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GBR_en.pdf.

[52] Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion, para. 133.

international standards."[53] There are also protections in other areas of international law that can complement these human rights obligations of due diligence. For example, article 2 of the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)[54] obligates State parties to prevent forced labour, including through "supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour."

B. Due diligence and the obligations to identify, assist and support victims

24. The present mandate holder has previously emphasized that States have a due diligence obligation to identify trafficked persons, which is foundational for ensuring many other aspects of a State's due diligence obligations with regard to trafficking in persons,[55] such as investigation and prosecution of traffickers, and assistance and protection for trafficked persons.[56] In practice, however, victim identification continues to be a huge hurdle in ensuring the rights of trafficked persons. The identification of victims is very often post hoc and too closely tied to the need to identify victims for criminal or immigration processes, rather than being pre-emptive in circumventing situations of exploitation that may increase susceptibility to trafficking.

25. Instead, a meaningful due diligence approach broadens the scope of identification to address a wider class of potential or presumed victims, as part of a comprehensive approach to prevention rather than a solely reactive or post-hoc due diligence measure. A wider and more pre-emptive approach necessarily involves a broader range of actors beyond law enforcement or border officials in identification. Good practices in this regard include involving actors such as labour and health and safety officials in identification of trafficking victims. Another good practice is for States to assign labour attachés to the staff of diplomatic missions, particularly in those countries that receive the largest number of a State's migrant workers. In order to facilitate victims' trust and identification — and subsequent protection and assistance — firewalls between certain areas (e.g., between enforcement of immigration laws and enforcement of labour laws) will often be necessary.

26. Additional good practices in this regard that have been previously identified by the present mandate holder include the use of mobile units in Italy "that ensure the presence of social services among populations at risk of exploitation, especially sex

[53] Ibid. at para. 148.

[54] P029 — Protocol of 2014 to the Forced Labour Convention, 1930. See also R203-Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

[55] A/HRC/17/35/Add.6, para. 65.

[56] The content of the due diligence obligation to identify victims of trafficking in persons has also been explicitly addressed by the dissent in the Committee on the Elimination of Discrimination against Women, Committee decision of *Zhen Zhen Zheng v. the Netherlands*, which stated that the Netherlands had failed to exercise due diligence as: "In the light of the nature of the crime of trafficking and the difficulty for victims, who are often uneducated and traumatized, to report precisely and with great details their experience, we are of the view that the Immigration and Naturalization Service did not act with the due diligence that the author's situation required by failing to recognize that she might have been a victim of trafficking in human beings and accordingly inform her of her rights" (*Zhen Zhen Zheng v. Netherlands*, para. 8.7).

workers"[57] and in the Bahamas, the opening of "channels of communication" between the Inter-Ministry Committee (the coordinating body for policy matters on trafficking in persons) and the Trafficking in Persons Task Force (the operational body for addressing trafficking in persons) "with the diplomatic and consular corps in the Bahamas, which have been encouraged to report any suspicion of trafficking cases."[58]

27. Victim identification under the rubric of prevention — as well as in the context of investigation, prosecution, protection and assistance — also requires greater training and understanding of the "continuum of exploitation" that exists between decent work and forced labour, such that workers experience different forms of exploitation that require different types of interventions when workers find themselves in any situation other than decent work.[59] In addition, training should address the relationship between different forms of transborder movement. For example, trafficking and smuggling are often treated distinctly when in practice they are often very linked, such that what was once an act of smuggling can be turned into an act of trafficking if the circumstances become more exploitative and involuntary.

28. As with all components of the due diligence standard, for due diligence requirements to be satisfied, the formal framework of protection and assistance established by the State must also be effective in practice.[60] While formalized structures are important, current anti-trafficking measures in many contexts have emphasized such generalized measures at the expense of tailored assistance and protection to individual victims. Instead, "individual due diligence" — measures to address individual victims — requires that States must act "flexibly", in ways that take into account the particular preference and needs of victims, including special account of the most vulnerable (e.g., children).[61]

C. Due diligence and criminalization, investigation, prosecution and punishment

29. The exercise of due diligence requires that remedies for victims be available and effective.[62] As well as being an obligation under article 5 of the United Nations Trafficking Protocol, the criminalization of trafficking is a core component of a State's due diligence obligations, including to protect victims, prevent future trafficking, and provide the necessary structures to investigate, prosecute and

[57] A/HRC/26/37/Add.4 (Apr. 1, 2014), para. 49.

[58] A/HRC/26/37/Add.5 (June 5, 2014), para. 75.

[59] Klara Skrivankova, "Between decent work and forced labour: examining the continuum of exploitation" (2010), available at http://www.jrf.org.uk/sites/files/jrf/forced-labour-exploitation-full.pdf.

[60] See, e.g., A/HRC/23/49, para. 15 ("For due diligence to be satisfied, the formal framework established by the State must also be effective in practice.").

[61] Ibid., para. 70 (noting that in addition to systemic measures, "Individual due diligence requires flexibility, as procedures taken in these instances must reflect the needs and preferences of the individuals harmed.").

[62] Ibid., paras. 72-75; E/CN.4/1996/53, para. 37. See also Hearing Submission: I, presented by the United Nations Special Rapporteur on violence against women, its causes and consequences to the Inter-American Commission on Human Rights 6 (Oct. 27, 2014).

adjudicate trafficking cases.[63] Accordingly, States also have due diligence obligations relating to the investigation and prosecution of suspected traffickers.[64] However, in practice, while more than 90 per cent of States have legislation criminalizing trafficking in persons, "this legislation does not always comply with the [United Nations Trafficking] Protocol, or does not cover all forms of trafficking and their victims, leaving far too many children, women and men vulnerable. Even where legislation is enacted, implementation often falls short."[65] Such problems in implementation constitute a failure of States' obligations to criminalize, investigate and punish trafficking in persons and deny victims access to justice. Particular gaps in criminalization also persist in the areas of trafficking for the purposes of organ removal and other forms of exploitation, including for committing crime, for begging, forced marriages and armed conflict.[66]

30. Human rights due diligence also requires effective investigation and prosecution that aims to avoid impunity, is independent, prompt and "must also be capable of leading to the identification and punishment of individuals responsible."[67] One example of effective due diligence practice in the investigation, prosecution and punishment of trafficking is enhanced cooperation between practitioners who are working to counter money laundering and trafficking in human beings, including by promoting the use of financial investigations linked with trafficking in persons-related offences.[68] For example, in the United States, authorities, in cooperation with banks and technology vendors, have established transaction-monitoring systems to capture transaction patterns and behaviour typical of human trafficking.[69]

31. In addition to the obligation to conduct a domestic investigation into events occurring on their own territories, due diligence also means that States have a "duty in cross-border trafficking cases to cooperate effectively with the relevant authorities of other States concerned in the investigation of events which occurred outside their territories."[70] In order to comply with the exterritorial implementation of due diligence obligations, States should also, for example, incorporate extraterritorial jurisdiction into national legislation criminalizing trafficking and strengthen protections against trafficking in contracting or procurement practices for activities abroad. For example, Belize's Trafficking in Persons (Prohibition) Act 2013 gives extraterritorial jurisdiction if trafficking is committed by a Belizean

[63] See, e.g., OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary, 185 (2010) (Commentary on the Recommended Principles).

[64] Hearing Submission: *Jessica Lenahan (Gonzales) v. United States*, presented by the United Nations Special Rapporteur on violence against women, its causes and consequences to the Inter-American Commission on Human Rights 6, 7 (Oct. 27, 2014). See also A/HRC/23/49, para. 73; E/CN.4/2000/68, para. 53. See further *Rantsev v. Cyprus and Russia* (2010).

[65] United Nations Office on Drugs and Crime (UNODC), Global Report on Trafficking in Persons 1 (2014), available at: https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP_2014_full_report.pdf.

[66] Ibid. at p. 34.

[67] See, e.g., *Rantsev v. Cyprus and Russia* (2010), para. 233.

[68] Organization for Security and Cooperation in Europe (OSCE), *Leveraging Anti-Money Laundering Regimes to Combat Trafficking in Human Beings* (2014), available at: http://www.osce.org/secretariat/121125.

[69] UNODC, *The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons* 50 (2015), available at: https://www.unodc.org/documents/human-trafficking/2015/Recruitment_Fees_Report-Final-22_June_2015_AG_Final.pdf.

[70] *Rantsev v. Cyprus and Russia* (2010), para. 289.

national or a person who is resident in Belize.[71] The present mandate holder has also previously emphasized the need to "extend the national legislative prohibition on trafficking in persons for the removal of organs and related offences extraterritorially, irrespective of the legal status of the relevant acts in the country in which they occur."[72]

32. Due diligence also requires that prosecutorial discretion — including on issues such as what charges to file and how to allocate prosecutorial resources — should be used in ways that comply with human rights due diligence obligations. This includes ensuring full respect for the principle of non-punishment, such that victims of trafficking in persons should not be detained, charged or prosecuted for activities that are a direct consequence of their situation as trafficking in persons, including for illegal entry into, exit out of or stay in States of origin, transit or destination, or their engagement in other illegal activities, such as unauthorized work.[73] Instead, in practice, the principle of non-punishment is often incorrectly treated as a mitigating factor in punishment rather a full guarantee that victims will not be penalized for these activities as is required under a human rights-based approach to trafficking.

33. Human rights due diligence also requires that investigations and prosecution adopt gender-specific measures that take into account the different assistance and protection needs of women and men, girls and boys and overcome discriminatory barriers to accessing remedies, such as by preventing the introduction of discriminatory evidence in proceedings to determine the victim's right to redress and ensuring that complaint mechanisms and investigations into trafficking in persons incorporate specific positive measures that enable victims to come forward to seek and obtain redress.[74] States should also address other barriers that victims of trafficking in persons often face, including diplomatic immunity when domestic workers are in diplomatic households. Some countries, such as Switzerland and Belgium, have established a specific mediation mechanism to resolve labour conflicts arising between domestic workers and persons enjoying diplomatic privileges and immunities.[75] Trafficked persons, as well as their families and relevant witnesses, should be protected against unlawful interference with their privacy and safety before, during and after relevant proceedings.[76]

[71] A/HRC/26/37/Add.6, para. 72.

[72] A/68/256, para. 74.

[73] A/HRC/26/18, annex, para. 7(f); UNODC, Model Law against Trafficking in Persons (UNODC Model Law), arts. 10, 21(4); OHCHR Recommended Principles, Principle 7, Guidelines 2(5), 4(5), 5(5); United Nations, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, Report on the meeting of the Working Group on Trafficking in Persons, held in Vienna on 14 and 15 April 2009 (CTOC/COP/WG.4/2009/2, para. 12).

[74] A/HRC/26/18, annex, para. 7(h); Committee against Torture General Comment No. 3, para. 33.

[75] See OSCE, *How to prevent human trafficking for domestic servitude in diplomatic households and protect private domestic workers* 48, 65 (2014), available at: http://www.osce.org/handbook/domesticservitude?download=true.

[76] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, paras. 10, 12(b) (Basic Principles and Guidelines on the Right to a Remedy and Reparation); A/HRC/26/18, annex, para. 7(j); OHCHR Recommended Principles, Guidelines 4(10), 5(8), 6(6); UNODC Model Law, art. 21; United Nations Trafficking Protocol, arts. 6(1), 6(5).

D. Due diligence and remedies

34. Under international human rights law, States have an obligation to ensure a right to remedy for victims of human rights violations.[77] As noted earlier, the failure of States to exercise due diligence in relation to trafficking by non-State actors gives rise to an obligation to provide remedies;[78] in this respect, the due diligence principle is a "long-standing exception"[79] to the general rule that State responsibility is based on acts or omissions committed either by State actors or by actors whose actions are attributable to the State. In substance, adequate remedy or reparations include restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.[80] The right to an effective remedy encompasses not only these substantive rights to remedies for the harm suffered, but also a set of procedural rights necessary to facilitate access to remedies.[81] Such remedies should have "transformative potential", meaning they should not be about returning individuals to the pre-trafficking context, but should "subvert instead of reinforce pre-existing patterns" that cause violations.[82]

35. The right to an effective remedy for victims of trafficking in persons should be interpreted and applied without discrimination, including to non-citizens.[83] A victim-centred and human rights-based approach to remedies centres the human rights of trafficked persons in all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.[84] This includes ensuring that anti-trafficking measures do not adversely impact the human rights of victims of trafficking in persons[85] and non-conditionality of victims' access to remedies, meaning that remedies, including assistance and protection, must not be dependent

[77] See, e.g., International Covenant on Civil and Political Rights, art. 2(3); Basic Principles and Guidelines on the Right to a Remedy and Reparation.

[78] See, e.g., Human Rights Council, General Comment No. 31, para. 8; Committee against Torture, General Comment No. 2, para. 18; Committee against Torture, General Comment No. 3, para. 7; A/HRC/26/18, annex, para. 2 (emphasis added) (This means that "all States, including countries of origin, transit and destination, shall provide adequate, effective and prompt remedies to victims of trafficking in persons, including non-citizens, within their territory and subject to their jurisdiction, when the State is legally responsible for any harm committed against them; this includes … when the State has failed to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, and to assist and protect victims of trafficking in persons.").

[79] A/HRC/23/49, para. 11.

[80] Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 18; A/HRC/26/18, annex. See also OHCHR Recommended Principles, Principle 17, Guideline 9(1).

[81] Committee against Torture, General Comment No. 3, para. 5; A/HRC/17/35, para. 17; A/HRC/26/18, annex, para. 5.

[82] A/HRC/23/49, para. 75.

[83] Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 25; A/HRC/26/18, annex, para. 4; OHCHR Recommended Principles, Guideline 1(4); UNODC Model Law, art. 3(2); Committee against Torture, General Comment No. 3, para. 32; United Nations Trafficking Protocol, art. 14(2).

[84] OHCHR Recommended Principles, Principle 1, Guideline 1; A/HRC/26/18, annex, para. 5.

[85] OHCHR Recommended Principles, Principle 3, Guideline 1; Basic Principles and Guidelines on the Right to a Remedy and Reparation, paras. 10, 25.

on the victim's willingness to cooperate with authorities.[86] For example, in Moldova the Government provides a minimum assistance package that includes physical, psychological and social recovery measures, where access to "assistance should not be dependent on the victim's willingness to participate in the prosecution of traffickers."[87]

36. The rapid and accurate identification of victims of trafficking in persons — as well as being part of a State's prevention obligation — is also an essential prerequisite to realize the right to remedy.[88] As such, the detention of victims of trafficking in persons, for example as smuggled or irregular migrants or undocumented migrant workers or as sex workers, constitutes a failure of this obligation to identify victims and denies them access to an effective remedy.[89] While trafficked persons have a right to safely remain in the country pending the completion of relevant proceedings[90] — including to participate in such proceedings — States should also ensure that a victim's immigration status or absence of the victim from the jurisdiction does not preclude enjoyment of the right to remedy.[91]

E. Due diligence and inter-State cooperation and institutions

37. Due diligence in human rights has tended to be quite State-centric.[92] However, increasingly in human rights, due diligence also shapes or influences the activities of inter-State and non-State entities. The transnational nature of human trafficking means that in practice States often cannot meet their due diligence obligations to prevent, investigate and punish trafficking, and assist victims, without cooperating with other countries, whether through existing mechanisms (e.g., mutual legal assistance or extradition agreements or cooperative arrangements mandated by the United Nations Trafficking Protocol and the Convention against Transnational Organized Crime) or through new forms of cooperation that are developed to address the demands of due diligence in a specific trafficking situation. The territorial and extraterritorial application of human rights — including the due diligence principle — means that in some cases States may have concurrent, and

[86] UNODC, Legislative guide for the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2004, para. 62; OHCHR Recommended Principles, Principle 8; UNODC Model Law, art. 20(1); OHCHR, Commentary on the Recommended Principles (2010), 142-143; A/HRC/26/18, annex, para. 7(i).

[87] GRETA, "Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Republic of Moldova" 114 (2012) available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_25_FGR_MDA_en.pdf.

[88] OHCHR Recommended Principles, Guidelines 2(1)-(4), 5(7), 8(2); UNODC Model Law, art. 18; A/HRC/26/18, annex, para. 7(b).

[89] OHCHR Recommended Principles, Guideline 2(6); OHCHR, Commentary on the Recommended Principles (2010), 129.

[90] OHCHR Recommended Principles, Principle 9, Guidelines 4(7) and 9(3); UNODC Model Law, art. 31; United Nations Trafficking Protocol, arts. 6(2), 8(2); Organized Crime Convention, art. 25(3).

[91] UNODC Model Law, arts. 27(3), 28(5); A/HRC/26/18, annex, para. 7(g).

[92] See, e.g., E/CN.4/2006/61, para. 15 ("the exclusively State-centric nature of the due diligence obligation has failed to take into account the changing power dynamics and the challenges these pose for State authority as well as the new questions they raise about accountability.").

potentially overlapping obligations of due diligence for trafficking in persons.[93] In such cases, States should utilize all means available to coordinate and cooperate in anti-trafficking efforts in ways that are also consistent with their other obligations of international cooperation (e.g., under the United Nations Trafficking Protocol and the Convention against Transnational Organized Crime).

38. In addition to improved inter-State cooperation, greater legal and policy coherence on human rights due diligence is also needed where States participate in intergovernmental institutions or entities, including international trade and financial institutions. While States retain their international human rights law obligations of due diligence when they participate in such institutions,[94] inter-State organizations should also embed due diligence in their governance activities, including in procurement practices and particularly in post-conflict situations.[95] The United Nations human rights due diligence policy on United Nations support to non-United Nations security forces that "sets out measures that all United Nations entities must take in order to ensure that any support that they may provide to non-United Nations forces is consistent with the purposes and principles as set out in the Charter of the United Nations and with its responsibility to respect, promote and encourage respect for international humanitarian, human rights and refugee law" is one example.[96]

39. As with individual States' overreliance on post-hoc measures such as investigation and prosecution, measures such as ombudspersons and internal evaluation offices that examine policies and activities (e.g., of the United Nations, the International Monetary Fund and the World Bank) are "positive steps" but are "reactive and cause(s) further reliance on the responsibility arm of due diligence rather than the practice and long-term processes that are necessary."[97] Instead, the humanitarian community, United Nations system, and donor community should, for example, undertake anti-trafficking responses before, during and after crisis moments in order to fully address the "relationship between pre-existing trafficking patterns and the heightened risks and vulnerabilities during crises."[98]

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[93] Ibid. at para. 34 ("The State cannot delegate its obligation to exercise due diligence, even in situations where certain functions are being performed by another State or by a non-State actor. It is the territorial State as well as any other States exercising jurisdiction or effective control in the territory that remain, in the end, ultimately responsible for ensuring that obligations of due diligence are met. Related to this point is the notion that due diligence may imply extraterritorial obligations for States that are exercising jurisdiction and effective control abroad.").

[94] Committee on the Elimination of Discrimination against Women, General Recommendation No. 30, para. 13; E/CN.4/2006/61, para. 97 ("International financial organizations also have obligations of due diligence in relation to preventing and responding to violence and other forms of discrimination against women.") and para. 98 ("Similarly, the United Nations system is obligated to respect and uphold the principles of the Organization ... they also have additional duties to cooperate and to establish coherent inter-agency strategies to work towards the elimination of violence against women in close collaboration with local communities and relevant civil society groups. The responsibilities of these organizations are in addition to the individual responsibilities of the States that are members of such organization.").

[95] See O'Donoghue, in *International Law and Post-Conflict Reconstruction Policy* (2015).

[96] Human rights due diligence policy on United Nations support to non-United Nations security forces (A/67/775-S/2013/110) 890.

[97] O'Donoghue, in *International Law and Post-Conflict Reconstruction Policy* 65 (2015).

[98] IOM, *Addressing Human Trafficking and Exploitation in times of Crisis — Evidence and recommendations for further action to protect vulnerable and mobile populations* 10 (2015).

F. Due diligence and non-State actors such as business enterprises

40. Human rights due diligence on trafficking is also relevant in the activities of non-State actors, such as business enterprises, trade unions and employer organizations. As with all other non-State actors, States have an obligation to exercise due diligence to prevent, investigate and punish trafficking through their laws and policies toward business entities.[99] This includes, for example, general rules requiring that businesses respect human rights and mandating that they undertake some form of human rights due diligence, as well as specific conditions on how States will conduct commercial transactions with business enterprises, including in their public procurement activities (e.g., by including a zero tolerance policy towards trafficking in contractual clauses and more generally revising public procurement procedures to prevent abusive and fraudulent recruitment).[100] Other good practices include that in Brazil, where the Government "maintains public records of individuals and corporations identified by labour inspectors to be using or to have used slave labour", who then subsequently "face financial sanctions, including fines and denial of national subsidies, tax exemptions and loans from State banks."[101] Disclosure requirements in domestic legislation that mandate companies to make their anti-trafficking policy, if they have one, transparent,[102] is a recent form of State practice that could be strengthened by mandating that companies have such anti-trafficking policies in place and report on their implementation. Recruitment agency licensing to regulate recruitment practices and to require that workers are not charged recruitment fees can be a particularly effective form of State practice to reduce the vulnerability of migrants to trafficking. For example, "some countries in the Americas, including Peru, have explicitly prohibited recruitment agencies from engaging in trafficking and from charging workers any recruitment fees".[103] Additionally, Indonesia and Nepal, "alongside a licensing process, there is a system by which workers can report abuses committed by recruitment agencies to the government."[104]

41. It is also important to recall that in cases where a business enterprise is controlled by the State or where its acts can be otherwise attributed to the State, the relevant standard is not one of due diligence towards private actors but whether the abuse of human rights by the business enterprise entails a violation of the State's international law obligations to respect, protect and fulfil human rights.[105]

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[99] United Nations Guiding Principles on Business and Human Rights (2011), Principle 1.

[100] Ibid., Principles 5 and 6. See also *Rantsev v. Cyprus and Russia* (2010), para. 284 (positive obligations also require "adequate measures regulating businesses often used as a cover for human trafficking.").

[101] A/67/261, para. 20.

[102] See, e.g., De Schutter et al., *Human Rights Due Diligence: The Role of States*, 43-48 (2012).

[103] UNODC, *The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons* 36 (2015).

[104] Ibid. at pp. 34-35.

[105] United Nations Guiding Principles on Business and Human Rights (2011), Principle 4 Commentary ("Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations.").

42. The term due diligence is now often used in reference to the "human rights due diligence process" of corporations to respect human rights.[106] This "human rights due diligence process" is understood within the business community as a voluntary commitment or "expected conduct"[107] that is a core component of the responsibility of business enterprises to respect human rights that extends beyond the activities of the core company to include harmful activities of affiliates and of business relations, including those down the supply chain.[108] Such a human rights due diligence process should "identify, prevent, mitigate and account for how they address their impacts on human rights", including by "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed".[109] The present mandate holder has accordingly previously developed a set of indicators and benchmarks as a "valuable tool for businesses to help them to exercise due diligence, in accordance with the United Nations Guiding Principles on Business and Human Rights, in their supply chains in order to detect and prevent trafficking cases" which will not be repeated in their entirety here.[110] In "many cases," global companies do have in place "corporate-level policies, and supplier codes of conduct that include a clear prohibition of forced labour and human trafficking" and provide communication and training initiatives to suppliers on these policies that can include information on compliance benchmarks and reporting requirements.[111] While such activities should be conducted in relation to all operations in the corporation's supply chain, corporations should particularly target those countries and business processes that constitute a particular risk for trafficking in persons (e.g., in crisis locations). Additionally, corporations should ensure that "traditional" strategies in corporate social responsibility are adapted to the realities of human trafficking. For example, corporations' use of "social audits" to assess working conditions at their own factories or facilities and those of their suppliers tend not to investigate how workers got their jobs (e.g., through a third party broker).[112] In order to detect workers' susceptibility to trafficking before arriving at a workplace, corporations "must gain an understanding of both their product and labour supply chains, and develop systems to obtain information and transparency on recruitment agencies and practices".[112]

V. Recommendations

43. **Under international law, States are required to exercise due diligence to prevent trafficking, to investigate and prosecute traffickers, to assist and protect victims of trafficking in persons and to ensure remedies.**

44. **States that have failed to exercise due diligence to address trafficking by non-State actors incur international responsibility that requires them to provide an effective remedy for victims of trafficking in persons. In substance,**

[106] United Nations Guiding Principles on Business and Human Rights (2011), Principles 15(b), 17, 18-21.
[107] Ibid., Principle 11 Commentary.
[108] Ibid., Principle 17 and Commentary.
[109] Ibid., Principles 15(b), 17.
[110] A/HRC/23/48/Add.4. See also A/67/261.
[111] UNODC, *The Role of Recruitment Fees and Abusive and Fraudulent Practices of Recruitment Agencies in Trafficking in Persons* 60 (2015).
[112] Ibid. at p. 61.

adequate remedy or reparations include restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition. The right to an effective remedy encompasses not only these substantive rights to remedies for the harm suffered, but also a set of procedural rights necessary to facilitate access to remedies.

45. Due diligence requires States to take a comprehensive, integrated and holistic approach to ensuring the human rights of trafficked persons and persons at risk of being trafficked. Meaningful and substantive human rights due diligence provides a necessary framework to ensure policy coherence between anti-trafficking policy and related policy areas such as immigration and labour market policies.

46. Both the territorial State and any other States exercising jurisdiction are responsible for meeting due diligence obligations. States' extraterritorial due diligence obligations are particularly important in the context of cases of transnational trafficking. States' obligations of due diligence continue in crisis contexts and under certain circumstances, non-State actors (e.g., armed groups) may also have such obligations.

47. While due diligence does not require uniform outcomes from differently situated States, as an obligation of conduct that must be exercised in good faith, it does require States to take reasonable measures that have a real prospect of altering outcomes or mitigating harms and to assess their effectiveness. Often it is not more resources but rather their reallocation — including towards preventative policies — that is needed for States to act diligently as assessed under the particular circumstances.

48. Due diligence to prevent trafficking requires action to address the wider, more systemic processes or root causes that contribute to trafficking in persons, such as inequality, restrictive immigration policies, and unfair labour conditions, particularly for migrant workers. Due diligence requires that in developing, implementing and assessing prevention approaches, initiatives be based on accurate data and targeted to those most at risk of trafficking in persons.

49. Due diligence in identifying victims should be pre-emptive and addressed to a wide range of actual and potential victims rather than a post-hoc measure tied to criminal processes. Due diligence in assisting and protecting victims should be tailored to their individual preferences and needs and not conditional on their cooperation with authorities.

50. Due diligence in the criminalization, investigation, prosecution and punishment of trafficking requires that laws criminalize all forms of trafficking, including for the purposes of organ removal and other forms of exploitation, including for committing crime, for begging, forced marriages and armed conflict. The extraterritorial application of due diligence obligations is furthered by measures such as incorporating extraterritorial jurisdiction into national legislation criminalizing trafficking and through inter-State cooperation in trafficking cases.

51. Due diligence in the criminalization, investigation, prosecution and punishment of trafficking also requires that investigatory and prosecutorial action must be independent, prompt and capable of leading to the identification

and punishment of responsible individuals, including through the use of financial investigation.

52. **Due diligence requires respect for the principle of non-punishment of victims as well as the removal of barriers in access to justice, including any limitations regarding residence or other personal status. This includes the adoption of gender-specific measures that take into account the different assistance and protection needs of women and men, girls, and boys and overcome discriminatory barriers to accessing remedies.**

53. **In addition to the obligations of due diligence of individual States when they participate in inter-State institutions such as the international financial institutions, inter-State organizations should also embed due diligence in their governance activities, including in procurement practices and particularly in post-conflict situations.**

54. **Non-State actors, such as business enterprises, themselves have a role in the due diligence framework, including through a voluntary "human rights due diligence process" pursuant to the soft law "responsibility to respect" framework that applies for corporations or through international human rights obligations under certain circumstances.**